THE

LAW OF LANDLORD AND TENANT

IN THE

LOWER PROVINCES OF BENGAL

BEING

ACT X. OF 1859, AND ACT VI. OF 1862, B. C.;

ILLUSTRATED BY

NUMEROUS DECISIONS OF THE COURT OF SADR DEWANI ADALAT, AND OF THE HIGH COURT OF JUDICATURE,

TOGETHER WITH THE

RULES OF THE BOARD OF REVENUE FOR THE GUIDANCE OF REVENUE OFFICERS IN THE ADMINISTRATION OF THE RENT LAWS.

EDITED BY

R. B. CHAPMAN, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW, SECRETARY TO THE BOARD OF REVENUE.

SECOND OFFICIAL EDITION, CORRECTED TO JUNE, 1866.

Calcutta:

PUBLISHED BY MESSRS. GEORGE WYMAN AND CO.,

1a, HARE STREET.

1866.

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THE

LAW FOR THE RECOVERY OF RENTS,

&c.

[NOTE.—The first decision by the High Court quoted in this work is dated 22nd July, 1862, all earlier decisions are by the Court of Sadr Dewani Adálat.]

ACT X OF 1859.

(Received the assent of the Governor-General on the 29th April, 1859.)

AN ACT *to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal.*

Preamble.

WHEREAS it is expedient to re-enact, with certain modifications, the provisions of the existing law relative to the rights of ryots with respect to the delivery of pottahs and the occupancy of land; to the prevention of illegal exaction and extortion in connection with demands of rent; and to other questions connected with the same: to extend the jurisdiction of Collectors: and to prescribe rules for the trial of such questions, as well as of suits for the recovery of arrears of rent, and of suits arising out of the distraint of property for such arrears: and to amend the law relating to distraint: It is enacted as follows:—

I. *(Repeals and modifies certain laws.)*

Ryot entitled to a pottah.

II. Every ryot is entitled to receive, from the person to whom the rent of the land held or cultivated by him is payable, a pottah containing the following particulars:—

The quantity of land, and, where fields have been numbered in a Government survey, the number of each field,

The amount of annual rent,

The instalments in which the same is to be paid,

And any special conditions of the lease,

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery.

1. The ryot must establish the relation of landlord and tenant.—*Kishn Dhan Adhikari, 12th August*, 1862.

Ryots holding land at fixed rates, to receive pottahs at those rates.

III. Ryots who, in the provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at those rates.

2. The only issue is whether the rent has been changed, since the permanent settlement, or not. The nature of the original pottah granted before the permanent settlement, is immaterial; and subsequent transfers of possession do not affect the right under this Section. Nothing in

Section xxxvii, Act XI of 1859, affects the right declared by this Section.—*Latif-un-nissa Bibi*, 26*th March*, 1863.—*Ram Nath Lal Bhakat*, 5*th August*, 1863.

3. The right is good against an auction-purchaser.—*Sadik Sirkar*, 31*st January*, 1866.

4. Change in the rent of a fractional part of an undivided tenure vitiates the tenure.—*Muhammad Muddin*, 7*th April*, 1863.

5. Unless the rent of the whole tenure is unaffected.—*Gopal Chandra Ghose*, 5*th July*, 1865.

6. The division of a ryot's holding among his heirs, each one of them, with the consent of the landlord, paying his share of the rent separately, is not, necessarily, the commencement of new tenancies. But if one among such shareholders default, the tenure of all is thereby vitiated.—*James Hills*, 9*th August*, 1864. *Do.*, 6*th July*, 1865.

7. The consolidation of several holdings into one by a Government Settlement Officer, or the omission of fractions from the rent, is not a change of the rate of rent within the meaning of this Section.—*Sukhi Mani Haldar*, 25*th July*, 1864.

8. An increase in the rent on account of additional lands is no "change of the rates of rent" under this Section; nor is the exaction of an illegal cess.—*Samir-ud-din Sirkar*, 7*th April*, 1865.

9. Nor a trifling addition to the total rent, though unexplained.—*Anand Lal Choudhary*, 22*nd November*, 1865.

10. Eviction, though it puts an end to the ryot's possession, does not destroy this tenure.—*Latif-un-nissa Bibi*, 26*th March*, 1863.

11. In a suit instituted for pottah at fixed rates under this Section, the plaintiff, failing to prove his right to a pottah at those rates, is not entitled to have a decree for a pottah at fair and equitable rates under Section v.—*Durga Mahtun*, 20*th March*, 1863.

12. The date of the permanent settlement must be taken to be the 22nd March, 1793.—*Babu Dhanpat Singh*, 5*th May*, 1864.

13. Before the passing of this Act there was no law which prevented a zemindar from enhancing rent, unless it were shown that the ryot held at fixed rates for twelve years before the decennial settlement; a pottah granted by the Collector in 1194 was invalid under the old laws.—*Ramesh Chandra Dutt*, 4*th May*, 1864.

14. The defendants having been addressed as "Mustajirs," held that they were not ryots, especially as their lands were very extensive.—*Dhanpat Singh*, 5*th May*, 1864.

15. The descendants of a tenant who held at fixed rates under a pottah dated subsequently to the permanent settlement, and which conveyed no hereditary right, have nothing but a right of occupancy.—*Ram Narayan Singh*, 24*th June*, 1864.

16. When the lands of two separate estates have become intermixed, and the owners of both estates collect their rents, by mutual consent, in fixed shares, from all the ryots, on all the lands, the admitted status of a ryot in *one* estate is no sufficient proof of his status in the *other* estate.—*Shiva Narayan Ghose*, 26*th November*, 1864.

17. Rents *in kind* are transitory, and this Section does not apply to them. A fixed *proportion* is not a fixed *rate*.—*Muhammad Yakub Hussain*, 16*th November*, 1865.

Presumption if rent of land have not changed for twenty years.

IV. Whenever, in any suit under the Act, it shall be proved that the rent at which land is held by a ryot in the said provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

18. Unless a defendant specially pleads that he has held from the time of the decennial settlement at an unchanged rate, the proof of unvaried rent for twenty years raises no presumption of law in favor of an absolute exemption from enhancement.—*Riaz-un-Nissa*, 30*th November*, 1863.

19. A plea, however, of a holding for an indefinite period is sufficient.—*Man Mohan Ghose*, 27*th January*, 1865. Though, properly speaking, the plea of holding from the permanent settlement should be made.—*Niyamat Ulla*, 16*th November*, 1865.

20. This Section does not require that a defendant should specially *claim* to hold from the time of the permanent settlement in order to obtain the benefit of the presumption which it creates.—*Jaga Mohan Das*, 5*th July*, 1865.—*Radha Nath Sirkar*, 2*nd August*, 1865.

21. If a defendant pleads that he has held at the same rent, *on a pottah of a date subsequent to that of the permanent settlement*, although upwards of twenty years, the defence annuls the presumption of law, and the case must be decided according to the pottah.—*Raja Manmohan Singh*, 12*th August*, 1862.—*Ram Narayan Singh*, 24*th June*, 1864. Unless the terms of the pottah are not inconsistent with the presumption.—*Bhyrav Nath Sandyal*, 2*nd July*, 1864.—*Kishta Mohan Ghose*, 30*th November*, 1865.

22. If the allegation be that, although the circumstances of a tenure have changed since the permanent settlement, yet the condition of Section III has been fulfilled, the presumption does not arise, and the issue to be tried will be, whether the condition of Section III has been fulfilled or not.—*Ram Kumar Mukharjya*, 5*th January*, 1865.

23. A party who has failed to establish a pottah alleged to have been granted to him before the permanent settlement, cannot fall back upon the presumption described in this Section.—*Umesh Chandra Biswas, 8th June*, 1864.

24. There must have been a holding by the ryot, or by some person through whom he claims, for twenty years next before the commencement of the suit, at a rent which has not been changed during that period.—*Latif-un-Nissa Bibi, 22nd August*, 1862.

25. Proof, therefore, that his title commenced at a date subsequent to the permanent settlement, is enough to bar a right under this Section, even though it be not proved that the rent of the land was, at the same, or at any other, period, altered.—*Pikam Lal Das, 2nd April*, 1863.

26. A plaintiff should have an opportunity given him of rebutting a presumption arising in favor of the defendant under this Section.—*Babu Beni Ram, 25th July*, 1864.

27. The twenty years' uniform rent must be *proved* by full legal evidence, and cannot be *presumed* from any evidence, however strong.—*Raj Narayan Ray Choudhary, 27th August* 1864.

28. Not even from evidence that the rent paid at the commencement of the proceedings was the rent paid more than twenty years previously.—*Kanakmani Devya, 6th July*, 1865.

29. But if, by evidence, direct or indirect, the holding at a uniform rate is proved to the satisfaction of the Court, that is enough.—*Radha Nath Sirkar, 2nd August*, 1865.

30. Inability to prove the precise amount of rent paid in each of the twenty years, does not vitiate the presumption.—*Kathyani Devi, 11th February*, 1865.

31. Non-payment of rent for some years, because the landlord refused to take it, does not vitiate the presumption.—*Gya Ram Dutt, 10th February*, 1865.

32. A recorded failure by a ryot, in times past, to prove a tenure at fixed rates, does not deprive him of the right to this presumption.—*Ishán Chandra Bhattacharjya, 3rd December*, 1864.

33. This Section makes no exception as to Khámár lands.—*Ram Kumar Mukharjya, 22nd December*, 1864.

34. The presumption does not arise from occupancy as a shareholder by mutual arrangement with other shareholders.—*Raghuvans Tewari, 5th April*, 1865.

Ryots having rights of occupancy, but not holding at fixed rates, to receive pottahs at fair and equitable rates.

V. Ryots having rights of occupancy, but not holding at fixed rates as described in the two preceding Sections, are entitled to receive pottahs at fair and equitable* rates. In case of dispute, the rate previously paid by a ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

35. In a suit instituted for a pottah at fixed rates under Section iii, the plaintiff, failing to prove his right to a pottah at those rates, is not entitled to have a decree for a pottah at fair and equitable rates, under this Section.—*Durga Mahtun, 20th March*, 1863.

36. It is not necessary for the Court, in fixing one average rate on the whole area of land, to specify the rate which each particular kind of land should bear, and thus show the mode in which the average has been arrived at.—*Babu Gurudas Ray, 11th February*, 1864.

37. The *onus* is upon the landlord to prove that the enhanced rent which he demands, is "fair and equitable;" the Court is not bound to take the enquiry upon itself.—(FULL BENCH). *Mr. McDonald, 14th June*, 1865.—(*See, in Selections, under date 15th August*, 1865, *Vol. II., p.* 701.)

38. The purchaser of a Government estate cannot enhance the rents of the ryots as entered in the Government Schedule of Assessment (Jama-bandi) without proving that the value of the lands has been increased since the settlement.—*Ram Lochan Pal, 21st July*, 1864.—*Sukhi Mani Haldar, 25th July*, 1864.

39. A plea of adverse possession bars a subsequent claim to right of occupancy.—*Mirza Nadir Beg, 4th January*, 1865.—*See also Ray Aditnarayan Singh, 28th August*, 1865.

Right of occupancy defined.

VI. Every ryot who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khámár, nij-jot, or sír land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sublet, for a term, or year by year, by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this Section.

40. Persons possessing an interest in land intermediate between the proprietor of an estate and the ryots, are not ryots, and cannot claim under this Section.—*Maharaja Narendra Narayan Bhup, 10th July*, 1863.—*Harish Chandra Kundu, 12th May*, 1863.

Vide Cases under Section XVII, clause 2.

41 There must be proof of actual cultivation by the claimant, or of a sub-letting within the meaning of this Section. *Brindaban Chandra Choudhary*, *4th January*, 1864.

42. This Section does not apply to middlemen in possession of lands held by ryots under them, for there cannot be two parties holding the same land, in separate right, as ryots.—*Bhyrav Nath Sandyal*, *24th December*, 1863.

43. Occupation as a trespasser, or cultivation by a trespasser, confers no right, and cannot be taken into account in considering whether such trespasser has occupied as a ryot for 12 years.—*Shekh Pir Baksh*, *8th March*, 1864.—FULL BENCH.

44. A tenant holding over after the expiration of his lease, and continuing to pay rent, acquires no right of occupancy, and the landlord's right of re-entry never lapses by limitation.—*Bansi Dhar Das*, *19th December*, 1864.

45. A person acquires no title under this Section by holding under a farming lease which has expired.—*Mr. D. L. Gilmore*, *2nd June*, 1864.

46. This Section does not affect a right to a tenure by grant or purchase. With such, occupancy has nothing to do.—*Nand Kumar Mandal*, *19th July*, 1863.

47. A lease which does not specify its own duration, does not fix the rent for ever. A ryot holding under such a lease, who has not acquired a right of occupancy, is entitled to have his improvements considered when an enhanced rent is fixed.—*Mathura Mohan Saha*, *27th July*, 1864.

48. A right of occupancy is transferable, but the landlord is not bound, under Section XXVII, to register its transfer.—*Mussamat Tara Mani Dasi*, *8th September*, 1864.

49. Whether a right of occupancy is transferable, depends upon local custom.—*Sri Ram Bose*, *10th May*, 1865.

VII. Nothing contained in the last preceding Section shall be held to affect the terms of any written contract, for the cultivation of land, entered into between a landholder and a ryot, when it contains any express stipulation contrary thereto.

Saving of terms of written contracts.

50. A lease *for a fixed term of years*, must be considered to "contain an express stipulation" within the meaning of this Section, against the acquisition of a right of occupancy by the lessee.—*Harish Kundu*, *12th May*, 1863.

51. A lease for a term of years does not bar a right-of-occupancy, unless it contains an "express stipulation" to that effect.—*Shiv Dayal Palit*, *10th February*, 1865.

52. If, however, such a lease is plainly intended to fix the *term* of the holding, and not only to fix the rent for the term which it specifies, it bars the right of occupancy.—*Ray Adit Narayan Singh*, *28th August*, 1865.

53. The right of occupancy cannot accrue under a lease granted by the manager of an attached estate.—*Sri Gopal Pal Choudhary*, *20th November*, 1865.

VIII. Ryots not having rights of occupancy are entitled to pottahs, only at such rates as may be agreed on between them and the persons to whom the rent is payable.

Pottahs to which ryots not having rights of occupancy are entitled.

54. A ryot not having a right of occupancy, is not entitled to a pottah until he can agree with his landlord as to the rate of rent.—*Lala Shiv Lal*, *3rd March*, 1863.

55. A tenant holding without an agreement is only liable, retrospectively, to a *fair* rate of rent.—*John Stalkart*, *19th July*, 1864.

56. A tenant, not a ryot, and not entitled to the benefit of Section XVII, is liable only to fair and reasonable rent.—*Pitambhar Saha*, *7th January*, 1865.

57. A tenant at will who holds on after notice of enhancement, is liable to the highest rack-rent which the land will, in any way, bear.—*Kabir Sirdar*, *29th June*, 1865. *Manir-ud-din Mirdha*, *14th December*, 1865.

58. A landlord who does not eject a tenant at the end of the year, and who exacts no new lease from him, acquiesces in the tenant's holding on under the old engagement for another year.—*Janaki Nath Sen*, *6th July*, 1865.

59. An agreement which fixes the rates of rent, without specifying any terms, can only be construed to settle the rent, *so long as the holding endures*; it has no effect upon the duration of the holding.—*Radha Sundari Guptia*, *27th July*, 1865.

IX. Every person who grants a pottah is entitled to receive from the person to whom the pottah is granted, a kabulyat, or counterpart engagement, in conformity with the terms of the pottah. The tender to any ryot of a pottah such as the ryot is entitled to receive, shall be held to entitle the person to whom the rent is payable to receive a kabulyat from such ryot.

Person granting pottah entitled to counterpart engagement.

60. By analogy with the prescriptions of the previous Section, the landlord cannot sue for a kabulyat until the rates have been agreed upon.—*Ram Manik Chakravartti*, *16th December*, 1865.

61. A landlord is not entitled to a kabulyat unless he has either granted or tendered a pottah.—*Govind Lal Sil*, *1st April*, 1863.

Exactions in excess of rent, or receipt withheld.

X.* Every under-tenant or ryot, from whom any sum is exacted in excess of the rent specified in his pottah, or payable under the provisions of this Act, whether as abwáb or under any other pretext; and every under-tenant, ryot, or cultivator from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the person receiving such rent, damages not exceeding double the amount so exacted or paid. Receipts for rent shall specify the year or years on account of which the rent is acknowledged to have been paid; and any refusal to make such specification shall be held to be a withholding of a receipt.

Form of receipt.

62. The damages mentioned in this Section are not penalties invariably to be decreed against persons withholding receipts of rent; but they are to be ascertained by an actual enquiry into the circumstances of each particular case, and never to exceed double the amount of the receipts which have been withheld. Under the provisions of this Section, the principals are liable for the acts of their agents.—*Rasmani Devya, 22nd April,* 1863.

63. A ryot, &c., is, under this Section, *entitled* to some damages. The discretion of the Court extends only to the *amount* of such damages.—*Zumurrud-un-Nissa Khanum, 8th December,* 1864.

Landholder not to compel the attendance of tenant for adjustment of rent or for any other purpose.

Payment of rent to be enforced only under this Act.

XI.* The power heretofore vested in zemindars and other landholders of compelling the attendance of their tenants for the adjustment of their rents, or for any other purpose, is withdrawn; and all such persons are prohibited from adopting any means of compulsion for enforcing payment of the rents due to them, other than are authorized by the provisions of this Act.

Damages for extorting payment of rent by duress.

XII.* If payment of rent, whether the same be legally due or not, is extorted from any under-tenant or ryot by illegal confinement or other duress, such under-tenant or ryot shall be entitled to recover such damages, not exceeding in any case the sum of two hundred rupees, as may be deemed a reasonable compensation for the injury done him by such extortion. An award of compensation under this Section shall not bar or affect any penalty or punishment to which the person practising such extortion may be subjected by law.

Enhancement of rent of ryot holding without, or after expiry, &c., of written engagement.

XIII. No under-tenant or ryot, who holds or cultivates land without a written engagement,—or under a written engagement not specifying the period of such engagement,—or whose engagement has expired, or has become cancelled, in consequence of the sale for arrears of revenue of the tenure or estate in which the land held or cultivated by him is situate, and has not been renewed,—shall be liable to pay any higher rent for such land than the rent payable for the previous year, unless a written notice shall have been served on such under tenant or ryot, in or before the month of Chyt, specifying the rent to which he will be subject for the ensuing year, and the ground on which an enhancement of rent is claimed. Such notice shall be served by order of the Collector, on the application, (which may be on plain paper), of the person to whom the rent is payable, and shall, if practicable, be served personally on the under-tenant or ryot. If, for any reason, the notice cannot be served personally upon the under-tenant or ryot, it shall be affixed at his usual place of residence, or, if he have no such place of residence in the district in which the land is situate, the mode of service of such notice shall be by affixing it at the mal kachahri of such land, or other conspicuous place thereon, or at the village Chowri or Chowpal, or at some other conspicuous place in the village in which the land is situate.

64. No previous notice is necessary when there has been a decree for a kabulyat at specific rates, although the rate sued for be in excess of that at which the tenant has hitherto held.—*Goursundar Choudhary, 29th May,* 1862.—*Ishan Chandra Ray, 26th June,* 1862.

* See Section XXIII. cl. 2.

65. Unless the decree be under the old laws, and have not been acted upon.—*Indra Singh 6th December*, 1864.

66. If the rate of rent is fixed by a decree of the Civil Court in a suit for assessment upon rent-free lands, it is not necessary to serve a notice of enhancement.—*Ramjivan Bose*, 30*th March*, 1863.

67. The necessity of serving notice for enhancement under this Section does not cease, because the defendant pays a higher rent for part of his tenure to a person other than the plaintiff.—*Shekh Niyamat Ali*, 12*th March*, 1863.—*Salik Ram Upadhyay*, 24*th June*, 1864.

68. If the notice state the area, *which it need not do*, the rent will be liable to adjustment if the area is incorrectly stated.—*Babu Khetranath Das*, 5*th August*, 1863.

69. A Naib may sign a notice of enhancement without any special authority.—*Digambhar Mittra*, 13*th March*, 1863.

70. A notice of enhancement is regular and has been properly served, if it is obviously issued on the part of the landlord, though it may not bear his signature, or the signature of his agent. An indigo factory situate on the lands is a "conspicuous place," and one notice served there is sufficient, although the lands be scattered.—*Hara Nath Ray*, 27*th April*, 1864.

71. If the notice do not specify the particulars prescribed in this Section, it is no notice at all.—*Rajkishn Ray*, 24*th June*, 1864.

72. A notice must be reasonably precise: a notice to pay a lump sum on the whole land in and out of defendant's possession is not sufficient.—*Turachand Ray*, 21*st July*, 1864.

73. But an objection arising from the informality of a notice may be waived by the tenant.—*Hira Lal Sil*, 9*th August*, 1862.

74. The signature and seal of the Collector need not be attached to the notice.—*Jagamohan Chatlarjya*, 21*st December*, 1864.

75. A Deputy Collector may issue the notice without the power being specially delegated to him.—*Kazi Syad Nasir Ali*, 14*th February*, 1865.

76. One notice was held sufficient in regard to *seventy-five separate holdings* situate in nineteen distinct villages, although each holding had been originally measured, assessed, and recorded, separately, in the Government rent roll, because the ryots and their landlord had been in the habit of treating them as one consolidated holding.—*Jadav Chandra Haldar*, 14*th May*, 1863.

77. The notice must be served upon the ryot *actually in possession*, and with whom the landlord has dealt as in possession.—*Ram Narayan Mukharjya*, 21*th November*, 1864.

78. If the wife has been recognized as the tenant, a notice upon the husband is insufficient.—*Sri Ram Ghose*, 29*th August*, 1865.

79. A landlord may sue for a lower enhanced rent than that mentioned in his notice, but not for a higher.—*James Hills, Jr*, 1*st August*, 1864.

80. A middleman is liable to enhancement when the productive powers of his land are increased by Government improvements, such as the erection of an embankment.—*Jadav Chandra Haldar*, 14*th May*, 1863. *Do*, 30*th May*, 1864.

81. But a *cultivator*, who has only a theoretical middleman's title, is entitled to no consideration.—*Asmat Ulla*, 18*th May*, 1865.

82. Homestead lands are liable to enhancement.—*Thomas J. Kenny*, 4*th February*, 1864.

83. This Section is not applicable to farmers, even when they hold over after the expiration of their lease.—*Nathu Ram Sahu*, 24*th June*, 1864.

84. A farmer for a term of years may enhance the rent of his ryots.—*Rushton*, 4*th March* 1863.

85. A landlord who has farmed his estate cannot issue a notice under this Section.—*Binodi Lal Ghose*, 10*th August*, 1865.

(See also under Section XXIII, Clause 4)

Mode of contesting enhancement of rent.

XIV. Any under-tenant or ryot, on whom such notice as aforesaid has been served, may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent as hereinafter provided,* or in answer to any suit† preferred against him for recovery of arrears of the enhanced rent.

86. Where the only plea is a denial of the right to enhance, the Court will not, if that fails, discuss the propriety of the rates. *Ganga Prasad Singh*, 11*th November* 1862.

87. But the Court is not always precluded from fixing the rent in such a suit.—*Shekh Ghulami*, 28*th March*, 1865.

88. A ryot, not having a right of occupancy, has no right to remain on the land, unless he can agree with the landlord as to the amount of rent. Such a ryot who gets notice of enhancement may wait until the landlord proceeds to levy the excessive rent by distraint, or until he brings an action for the rent specified in the notice, and then set up that the amount of rent claimed by the landlord is higher than he is entitled to demand. But he cannot take the initiative by bringing an action to set aside the notice of enhancement, and to compel the landlord to allow him to remain another year, at a less rent than the landlord is willing to take—*Shekh Mohim*, 12*th March*, 1863.

* Section XXIII, Clause 3. † Ibid, Clause 4.

XV. No dependent tálúkdár, or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the ryots, who, in the provinces of Bengal, Behar, Orissa, and Benares, holds his tálúk or tenure, (otherwise than under a terminable lease), at a fixed rent which has not been changed from the time of the permanent settlement, shall be liable to any enhancement of such rent, anything in Section li., Regulation VIII., 1793, or in any other law, to the contrary, notwithstanding.

Dependent tálúkdár, &c., holding land at fixed rent without change since permanent settlement, not liable to enhancement of rent.

89. A lease which runs, "You shall continue to pay the sum of Rs. 5 Sicca fixed on the whole as ticca jumma of the said mouzah, every year, and, having cleared the village of jungal, and having brought the lands under cultivation yourself and through others, as usual, enjoy and occupy the same, with your son and grandson in succession," &c., conveys an absolute interest. The grantee and his heirs are entitled to transfer it, and to vest in the transferree the full benefit of the lease. Such a lease granted since the time of the permanent settlement, would not be binding upon a purchaser at a sale for arrears of revenue; but it is binding upon any one acquiring the zemindary rights in any other way.—*Bishwambhar Pal, 4th March*, 1863.

90. Section xvii., clause 3, does not apply to a tálúkdár under this Section, especially if his lease specifies definite boundaries.—*Chandra Kanth Mukharjya, 14th August* 1863.

91. The provisions of the sale law do not override this Section.—*A. J. Forbes, 7th December*, 1863.

92. The rent of an under-tenure of a permanent kind cannot be enhanced at discretion; the proper rent is the rent of similar tenures in the neighbourhood.—*Muhammad Ayn-ud-din, 8th December*, 1865.

93. A decree for enhancement under the old laws, if not executed, does not annul the right.—*Govind Chandra Dutt, 15th January*, 1866.

XVI. Whenever, in any suit under this Act, it shall be proved that the rent at which a tálúk or other tenure is held, in the said provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluk or tenure has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period.

Presumption that the rent has not been changed since permanent settlement from proof of its constancy for twenty years.

94. Change in the rent of an undivided fractional part of a tenure destroys the presumption raised under this Section.—*Muhammad Muddin, 7th April*, 1863.

95. It is not necessary, in order to establish this presumption, that specific proof be given of the amount of rent actually paid in each of the twenty years. Any evidence that satisfies the Judge that the rent has not, during that period, been changed, is sufficient. A recorded failure by the tenant, to prove, under former laws, that his tenure commenced before the permanent settlement, does not deprive him of the benefits of this Section, by which, upon proof of twenty years' unchanged rent, the *onus* is transferred to the landlord.—*Anand Mohan Ghose, 11th August*, 1864.

96. The right of a talukdar under this Section is not affected by the position of the zemindar, *e. g.*, his being a recent purchaser.—*Dhan Singh, 2nd March*, 1864.

XVII. No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

Grounds on which ryot having right of occupancy is liable to enhanced rent.

1. That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent.

That the rate paid by him is below that prevailing in adjacent places.

97. The plaintiff having alleged, as his ground for enhancement, that the rates at which the defendant held were lower than the prevailing rates in the neighbourhood, could not claim enhancement upon the ground that the pergunnah rates were obsolete, or, in other words, that the rates of the whole neighbourhood were too low.—*Lakhan Magilla, 25th March*, 1863.

98. The principle here prescribed is that of the old Regulations, and must be strictly adhered to.—*Din Dayal Agasti, 19th July*, 1864.

99. The purchaser of a Government estate who undertakes to respect the Schedule of Assessment made by the Revenue Authorities, is precluded from enhancing the rents of the tenants on this ground.—*Sukhi Mani Haldar, 25th July*, 1864.

100. The rates with which the comparison is made need not be those of the village in which the land is situate.—*Dakhina Mohan Roy Choudhary*, 5*th August*, 1863.

101. The rates assessed in a case decided *ex parte* and without local enquiry, are no good criterion for the rates assessable on the other lands in the same village.—*Ramanand Mandal*, 27*th March*, 1862.—*Nara Hari Mahant*, 12*th August*, 1862.—*Anna Purna Dasi*, 8*th July*, 1864.

102. The decree of a Court of competent jurisdiction fixing the rates of adjacent lands, can be received as evidence, but it is not *conclusive* evidence.—*T. J. Kenny*, 29*th September*, 1864.

That the value of the land, &c., has increased independently of the ryot.

2. That the value of the produce or the productive powers of the land have been increased, otherwise than by the agency or at the expense of the ryot.

103. A decree fixing the rates of rent is no evidence at all of what may be "fair and equitable" *for adjacent* lands under this ground of enhancement.—*Sri Ram Bhatacharyya*, 9*th August*, 1865.

104. The rent paid for land of equal fertility, by ryots of the same class with the defendant in the adjacent places, according to the custom of the country, is the "fair and equitable" rent which a ryot with a right of occupancy must pay when "the value of the produce or the productive powers of the land have been increased otherwise than by his agency or at his expense."

If the rents of the neighbourhood have not adjusted themselves to the altered circumstances of the lands, the rent should be fixed according to the method of proportion, *i. e.*, the *increased* rent must bear to the *original* rent the same proportion that the *increased* value of the produce bears to the *original* value of the produce.—*Shiva Narayan Ghose*, 26*th November*, 1864. Except under special circumstances.—*Thakurani Dasi*, 19*th June*, 1865. WHOLE COURT.

105. A local enquiry is not *indispensable*.—The Court may, if it be satisfied, decide what is a fair and equitable rent without any inquiry.—*Purna Prasad Ray*, 1*st December*, 1864.

106. A tank dug for public use, and a garden rendered productive by the exertions and outlay of the tenants, held not exempt from enhancement.—*Lakhan Magilla*, 25*th March*, 1863.

107. To make a garden on garden ground is not to increase the productive powers of the land within the meaning of this clause.—*Dina Nath Mullik*, 12*th August*, 1864.

108. Jangalburi rents are liable to enhancement.—*Babu Dhanpat Singh*, 5*th May*, 1864.

109. This clause must always be read with reference to the general provision of Section v. that the rent of a ryot having a right of occupancy shall not be more than is fair and equitable. In considering what is fair and equitable, the ryot should not be called on to pay to the landlord, under the name of rent, what is in fact not rent but the produce of his own labor and capital sunk in the land.—*Nur Muhammad Mandal*, 31*st May*, 1864.

110. If a ryot plead that the increase in the productive powers is due to his expenditure, the *onus* is upon him.—*Navin Kishn Bose*, 18*th August*, 1864.

111. The rent may be enhanced in respect of trees planted by the tenant, but not in respect of profit derived by him from a fair held upon his ground.—*Raja Kewajah Chyman*, 27*th August*, 1861.

112. A ryot, with a right of occupancy, who by his own agency, and at his own expense, has increased the value of the produce or the productive powers of the land, is not liable to any enhancement at all for a reasonable period; and, if he has made uncultivable land cultivable, he is entitled, perhaps, to hold at a low rate for ever.—*Choudhary Khan*, 27*th January*, 1865.

That the quantity of land held by the ryot is greater than he has paid rent for.

3. That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

113. The *onus* of proving this plea is upon the landlord, who must proceed under Section ix., Act VI of 1862, B. C. It is not for the Court to measure.—*Hara Mohan Mukharjya*, 14*th September*, 1864.

114. Does not apply to a talukdar possessing permanent rights.—*Chandra Kanth Mukharjya*, 14*th August*, 1863.

115. When a pottah leases a certain area within defined boundaries, at a fixed rent, the excess area cannot be assessed.—*Ram Narayan Nandi*, 17*th February*, 1864.

116. If a mukarari pottah is for a specified area without mention of boundaries, the landlord may assess, at fair and equitable rates, any land held by the tenant in excess of that area.—*Bipra Das De*, 31*st March*, 1864.

117. A lease was granted for 15 bighas of land within specified boundaries, with a condition for reduction of rent if there should prove to be less than 15 bighas: HELD that the landlord had no right to assess lands, within the boundaries, in excess of 15 bighas.—*B. C. Limond*, 24*th June*, 1864.

118. Land held under a mukarari lease, dated before 1790, in excess of the area stated in the lease, held not liable to separate assessment.—*Janaki Bhallav Chakravartti*, 25*th January*, 1865.

119. If a local enquiry ordered by an Appellate Court for the ascertainment of *rates*, discloses an excess *area*, the decree must follow the disclosure.—*Ras Mani Dasi*, 6*th August*, 1864.

120. Enhancement upon the grounds stated in this Section can only be claimed after notice issued under Section XIII.—*Raja Barodakanth Ray Bahadur*, 29*th November*, 1865.

When ryot may claim abatement of rent.

XVIII. Every ryot having a right of occupancy, shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise,—or if the value of the produce, or the productive powers of the land, have been decreased by any cause beyond the power of the ryot,—or if the quantity of land held by the ryot has been proved, by measurement, to be less than the quantity for which rent has been previously paid by him.

121. A plaintiff cannot obtain a greater abatement of rent than he has demanded, even though such greater abatement be according to defendant's own allegation.—*Haradhan Banarjya*, 17*th August*, 1863.

Relinquishment of land by ryot after notice given.

XIX. Any ryot, who desires to relinquish the land held or cultivated by him, shall be at liberty to do so, provided he gives notice of his intention, in writing, to the person entitled to the rent of the land, or his authorized agent, in or before the month of Chyt of the year preceding that in which the relinquishment is to have effect. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. If the person entitled to the rent of the land, or his agent, refuse to receive any such notice and to sign a receipt for the same, the ryot may make an application on plain paper to the Collector, who shall, thereupon, cause the notice to be served on such person or his agent in the manner provided in Section xiii.

122. The landlord of an utbandi ryot served notice upon him that unless he paid at enhanced rent for the ensuing year, he was to quit the land, and the ryot, in reply, intimated to the landlord's agent that he would quit the land:—HELD that the ryot had sufficiently complied with this Section and was entitled to quit the land.—*Mr. Thos. J. Kenny*, 2*nd February*, 1861.

123. Actual relinquishment must be proved in order to protect a ryot from liability for rent: proof of service of the notice is not sufficient.—*Navin Chandra Ray Sarmma*, 15*th August*, 1864.

121. A proprietor of a tenure whose name is registered in the landlord's office, is not exempt from the payment of rent during the time he was out of possession of the said tenure, unless he can show that his ouster took place by some act of the landlord.—*Mussamat Mohan Mala*, 27*th March*, 1862.

125. A landlord cannot sue a tenant for rent of land which is, allowedly, not in the tenant's possession, and which the landlord knows has been taken by Government for a public purpose.—*Ram Kishn Das*, 26*th March*, 1862.

What to be deemed an arrear of rent under this Act.

XX. Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or, if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and, unless otherwise provided by written agreement, shall be liable to interest at twelve per cent. per annum.

126. Does not apply to a case in which the defendant is not a tenant, but a co-sharer in the estate.—*Golok Chandra Ray*, 16*th September*, 1862.

127. The Court is not *bound* to give interest by this Section.—*John Beckwith*, 13*th February*, 1863.—*Kashi Nath Choudhary*, 21*st September*, 1864.

128. And it may award interest from what date it thinks fit.—*Maharani Indrajit Kunwar*, 22*nd August*, 1861.

129. Cannot be allowed in addition to damages under Section ii, Act VI of 1162, B. C.—*Nava Kanth De*, 9*th September*, 1864.

130. In a suit for rent, on a kabulyat executed before this Act came into operation, interest may be allowed by the Court, under this Section, from the date on which this Act came into operation.—*Sinagapi*, 1*st April*, 1863.

Liability of ryot to be ejected for arrear due.

XXI. When an arrear of rent remains due from any ryot at the end of the Bengali year, or at the end of the month of Jeth of the Fasli or Wilayaty year, as the case may be, such ryot shall be liable

to be ejected from the land in respect of which the arrear is due. Provided that no ryot having a right of occupancy, or holding under a pottah the term of which has not expired, shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Proviso.

131. A ryot is not liable to ejectment for non-payment of rent due for the first ten months of the year, but only on account of arrears of rent due at the close of the Bengali year. Such a matter should be noticed by the Lower Courts, whether pleaded by defendant or not.—*Ramjivan Das, 5th August*, 1863.

XXII. When an arrear of rent shall be adjudged to be due from any farmer or other lease-holder not having a permanent or transferable interest in the land, the lease of such lease-holder shall be liable to be cancelled, and the lease-holder to be ejected. Provided that no such lease shall be cancelled, nor the lease-holder ejected, otherwise than in execution of a decree or order under the provisions of this Act.

Liability of farmer to have his lease cancelled for arrear adjudged due.

Proviso.

132. The purchaser of a Government estate is bound to respect a Shikmi Taluk, which the Government, during its tenure of the estate, has sold for arrears and so recognized.—*Golok Chandra Sen, 28th January*, 1863.

133. The zemindars having, by their acts, admitted the tenure to be transferable and mukarari, it is not for the High Court to declare that the tenure is neither transferable nor mukarari, in a suit for rent. The proper tribunal to settle such questions is a Civil Court, and not a Revenue Court.—*Babu Dhanpat Singh, 5th May*, 1864.

134. It does not follow, because a tenure is transferable by sale, that its rent is fixed for ever. A landlord may enhance the rent of a tenure which he has caused to be sold.—*Adwaitya Charan Ray, 13th July*, 1863.

135. If a lease provides that, in case of default of payment of rent, the lessor is to have the power of re-entry, without expressly mentioning the mode of effecting it, the lessor is bound to exercise this power according to the provisions of this Section. But the parties may contract that there shall be a power of re-entry without applying to any Court.—*R. Solano, 23rd December*, 1862.

136. In this case the Court recognized the transferable character, even without the consent of the zemindar, of a ryot's holding in Rungpore, though held at a variable rent.—*Digambari Devya, 10th June*, 1864.

137. What tenures are transferable in a particular district, and whether a tenure is, in a particular district, transferable without the consent of the landlord, can only be settled by enquiry into the local custom of the district. There is no general law or custom applicable throughout the country.—*Jay Kishn Mukharjya, 21st September*, 1864.

138. Rights of occupancy established by the ancient prescription and custom of the country, such as Nim Hawalas, are transferable, though they do not carry a right to hold at fixed rates.—*Jagat Chandra Ray, 15th September*, 1864.

139. A tenure which is not *mukarari* may be *transferable*. The difference between *mukarari* and *mourusi* explained.—*Haramohan Mukharjya, 4th August*, 1864.—*Sukhi Mani Haldar, 25th July*, 1864.

XXIII. 1. All suits* for the delivery of pottahs† or kabulyats, or for the determination of the rates of rent at which such pottahs or kabulyats are to be delivered;

Cognizance of suits under this Act.

SUITS FOR POTTAHS.

140. The fact of there being, accidentally, a small arrear of rent due, is no answer to a suit for a pottah.—*Sri Ram Ray, 22nd January*, 1863.

141. The relation of landlord and tenant must be established.—*Kishn Dhan Adhikari, 12th August*, 1862.

142. Proof that the plaintiff holds the land is necessary to entitle him to a pottah.—*Nidhi Das, 31st May*, 1864.

143. An action to compel an auction purchaser to confirm an istimrari pottah cannot be heard under this clause. The Lower Appellate Court having found the pottah of the defendant to be good, should have proceeded to try how far the pottah affected the plaintiff's rights as an auction purchaser.—*Kylas Chandra De, 24th June*, 1864.

* One an 8 anna Stamp: See Board's Rule I. See also Rule II. † See Section LXXVI.

FOR A KABULYAT, AND TO FIX THE RATES.

144. A zemindar, having established his right to resume lakhiraj land, can, after issue of notice to the tenants, of the rates of rent demanded for the land, institute a suit under this clause to obtain the confirmation of those rates, and procure a kabulyat in accordance therewith, but *no arrears* of rent can be decreed to him in such a suit.—*Jay Kishn Mukharjya*, 13*th July*, 1861.

145. A landlord cannot sue for a kabulyat without proving that he has granted, or tendered, a pottah.—*Gobind Lal Sil*, 1*st April*, 1863.

146. It is competent to a zemindar, after issue of notice of enhancement of rent under Section xiii, to institute a suit, under this clause, to determine the rates of enhanced rent and to enforce the delivery of a kabulyat at the rates determined. Whenever a proprietor is willing to grant a pottah, and tenders the same to a ryot, he is entitled to demand a kabulyat and to enforce that demand by a suit: the institution of the suit is in itself evidence of the tender of a pottah and demand of kabulyat, sufficient to justify the action.—*Jay Kishn Mukharjya*, 31*st March*, 1862.

147. When a plaintiff, in a suit for a kabulyat, gets a decree, he is, thenceforward, entitled to receive rent at the rate specified in the kabulyat. No notice is necessary to the tenant, under Section xiii, although the rate sued for be in excess of that at which the tenant has hitherto held. But, if it be so in excess, the enhanced rate will be payable only from the commencement of the year following the decree.—*Gour Sundar Choudhary*, 29*th May*, 1862.—*Ishan Chandra Ray* 26*th June*, 1862.—*Ram Kanth Choudhary*, 7*th July*, 1864. (FULL BENCH.)

148. If the suit is for a kabulyat at enhanced rates, the legal ground of enhancement must be fully disclosed.—*Amrit Lal Bose*, 19*th December*, 1865.

149. It is not necessary, when a defendant does not claim to be a ryot having the right of occupancy, for the plaintiff to state *on what grounds* he claims a kabulyat at enhanced rates.—*Jan Ali*, 5*th January*, 1864.

150. But in such a case, he cannot sue until the ryot and he have agreed upon the rates, as by the analogy of Section viii.—*Ram Manik Chakravartti*, 16*th December*, 1865.

151. It is not necessary, in an action for a kabulyat *at an enhanced rate*, that attention should be called to this fact in the plaint. The officer deciding the case should determine the rate of rent at which the kabulyat is to be given.—*Messrs. Cohn, Feilman and Co.*, 11*th June*, 1862.

152. In a suit by a landowner to recover rent at enhanced rates, or for a kabulyat at enhanced rates, the rent cannot be fixed for a period of years, as it can be, under Section lxxvi, in a suit by a ryot with right of occupancy for a pottah. The difference between the two cases is this, that a right of occupancy is the right of the ryot: it does not also give the landlord a right to compel him to continue his occupation.—*James Hills*, 2*nd September*, 1863.

153. The transferee or purchaser of a zemindari cannot, except on special grounds, sue a patnidar for a fresh kabulyat.—*J. Beckwith*, 26*th September*, 1861.

RELATION OF LANDLORD AND TENANT.

154. In a suit for a kabulyat, it must be shown that the relation of landlord and tenant exists.—*Gopimohan Ghose*, 3*rd December*, 1863

155. If no such contract, express or implied, can be proved, the procedure must be for ejectment (*Or query resumption under Section 28 ?*).—*Raja Jay Mangal Singh*, 16*th December*, 1864.

156. In a suit for a kabulyat on the ground that the defendant had occupied and cultivated certain lands of the plaintiff, the defendant pleaded that he was co-parcener with the plaintiff in the lands, but admitted that he had given a kabulyat for some of the lands he occupied. HELD that since, by giving a kabulyat, the defendant had acknowledged the plaintiff to be his landlord, the *onus* of proving the plea was upon the defendant.—*Guru Prasad Ray*, 5*th August*, 1862.

157. A person who avowedly holds and cultivates another's lands, is, by the universal custom of the country, his tenant, though there may have been no express permission to cultivate on the side of the landlord, nor any express condition to pay rent on the part of the cultivator, and, while so holding and cultivating, the cultivator is bound to pay the landlord rent, and to give him a kabulyat. Though proof of tender by landlord, and refusal by tenant, of a pottah, is a necessary preliminary in a suit for a kabulyat, it is not necessary or practicable in a suit not for a kabulyat only, but for determination of rent and for a kabulyat.—*Nityanand Ghose*, 20*th June*, 1864.

158. The fact of the defendant's being now in possession of lands under apparently genuine title deeds, held sufficient to entitle them to resist the zemindar's claim to assess them, the zemindar not having shown that the defendants had paid him rent. The Lower Courts were therefore right in referring the plaintiff to a regular suit for resumption.—*Matangini Devya*, 18*th March*, 1864.

CLAIM TO HOLD RENT-FREE, OR AT FAVOURABLE RATES.

159. When a suit under this clause is met by a claim to hold at fixed rates, the issues to be determined are, whether the rent of the land has been changed or not since the permanent settlement, or, if that cannot be decided, whether it has been changed or not during the 20 years preceding the suit.—*Asghar Ali Choudhary*, 23*rd June*, 1864.

160. The mere fact of long rent-free possession on a service tenure gives the holder no exemption from rent when the service is no longer required or performed.—*Chandra Nath Ray*, 31*st March*, 1864.

161. Before the rent of a service tenure can be enhanced, the tenure must be legally resumed.—*Nil Muni Singh Deo, 22nd May*, 1863.

162. A tenant is not bound to execute a kabulyat for land held under an istimrari pottah. If a tenant mixes up land upon which he has encroached with his rightful holding, and cannot show which is his own and which the zemindar's land, he may be assumed to have encroached upon the best land, and is liable to be assessed for it as for land of the best quality.—*Durga Kanth Majumdar, 5th April*, 1864.

163. Section 11, Regulation VIII of 1819, only entitles a patnidar who has purchased his tenure at auction to avoid the incumbrances therein specified created by his immediate predecessor for whose default the patni was sold.—*Ishan Chandra Kar, 18th August*, 1863.

SHAREHOLDERS.

164. One of several proprietors of an estate held in co-parcenary can bring a suit to fix his share of the rent without a partition.—*Trylokya Charan Choudhary, 1st April*, 1864.—*Ram Lochan Dutt, 13th July*, 1864.

165. The fact of a mukrarridar having, for any reason, agreed to pay an enhanced rent to one shareholder, does not entitle another shareholder to demand enhanced rent except after notice under Section XIII.—*Salik Ram Upadhyay, 24th June*, 1864.

MISCELLANEOUS.

166. The rent declared to be payable by defendant in a former suit is evidence of the rent still payable, though the defendant may rebut it by proof of change.—*Chandra Kumár Ray, 24th June*, 1864.

167. The decision of a Collector, in the course of proceedings for the partition of an estate as to the rate of rent payable by a ryot or under-tenant, is not binding upon the ryot or cultivator, and he may question that decision in answer to a suit under this clause.—*Paltu Ray, 30th July*, 1862.—*Beni Madhav Banarjya, 6th September*, 1865.

168. An intervenor can appear, under Section 77, in a suit for a kabulyat under this clause.—*Shekh Manik Mandal, 4th August*, 1863.—*Rani Khyameshwrari Devya, 8th July*, 1864.

169. A Collector cannot order the insertion in a kabulyat of a condition that the tenure shall be saleable under Regulation VIII of 1819.—*Buzurg Chaman, 1st July*, 1864.

170. A lease which gives a right to hold on, after expiry, pending fresh arrangements, does not bar the landlord from farming his estate. The farmer is entitled to a kabulyat.—*Kylas Chandra Mukharjya, 1st December*, 1864.

2. All suits* for damages on account of the illegal exaction of rent, or of any unauthorized cess or impost,—or on account of the refusal of receipts for rent paid, or on account of the extortion of rent by confinement or other duress;

171. The recovery by a zemindar of a sum in excess of the rent due, by a proceeding recognized by law, is not an illegal exaction of rent under Section x.—*Devendra Nath Ray Choudhary, 23rd April*, 1863.

172. The collection by a landlord, direct from the ryots, of rents in excess of the rent due to him by his farmer, is an exaction of excess rent, for which a suit lies under this Section.—*Ram Prasad Bhakat, 31st July*, 1863.

3. All complaints* of excessive demand of rent—and all claims* to abatement of rent;

173. A zemindar is entitled to a decree for arrears of rent, notwithstanding that the ryot has sued for abatement.—*Harish Chandra Choudhary, 17th August*, 1863.

174. A suit to establish a contested right to hold at certain rates is not cognizable under this clause, but by the Civil Court only.—*Sri Rám Ghose, 14th March*, 1864.

175. A patnidar or any other lease-holder can sue for abatement of rent under this Section.—*Hara Kisha Banarjya, 10th December*, 1864.—(FULL BENCH.)

176. The rent of a taluk may be abated on the ground of diluvion, or a deduction may be allowed on this account in a suit for arrears of rent.—*Afsar-ud-din, 19th June*, 1863.—*Thomas Savi, 20th January*, 1865.

* For proper stamp, see Board's Rule I.

177. Ryots not having a right of occupancy can sue for abatement when they can show that they are justly and equitably entitled to it.—*Ram Chandra Bose*, 17*th August*, 1863.

178. A tenant holding under a lease, unless the terms of the lease expressly preclude it, is entitled to abatement of rent for land washed away. If he holds on after expiry, he can only claim abatement according to the lease. Ryots without any statutory rights may nevertheless be entitled to abatement.—*Shekh Inayat Ulla*, 5*th April*, 1864.

179. Dispossession from part of his lands by a party other than his landlord, gives a tenant no claim against his landlord to abatement of rent.—*Mahesh Chandra Ghose*, 21*th November*, 1864.

180. Abatement allowed on the ground of the land in plaintiff's possession being less than the area stated in his pottah, notwithstanding a provision in his kabulyat binding him not to make any claim on that account.—*Haramani Choudhrain*, 5*th July*, 1864.

181. Plaintiff cannot obtain a higher abatement of rent than he has demanded, even though such higher abatement be according to defendant's own allegation.—*Haradhan Banarjya*, 17*th August*, 1863.

182. A suit for abatement of rent and refund of excess rents paid on account of diluviated land as provided by the lease, is cognizable before the Collector under this clause. The plaintiff's right of action in such a case accrues from the time when he is compelled to pay the rent named in his pottah without the allowance of the abatement he claims, and not, necessarily, from the time when diluvion takes place.—*G. R. Barry*, 6*th May*, 1864.

4. All suits for arrears* of rent due on account of land either khiraji or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like;

PRESUMPTION OF PAYMENT FROM LATER CREDIT.

183. When rent for a particular year has been sued for and decreed, the *presumption, a rebuttable one*, arises that the rent for years prior to that for which a decree has been given, has been paid.—*Siva Narayan Bhatacharyya*, 5*th September*, 1861.—*Aishn Jivan Lakshi*, 21*st May*, 1862.—*Rani Surath Sundari Deeya*, 5*th December*, 1864.

184. This presumption does not arise, unless the earlier payments are distinctly asserted and pleaded.—*Raja Satya Charan Ghosal*, 25*th January*, 1865.

185. The admission that, out of Rs. 11,103 due on account of three years, Rs. 9,190 have been received, affords a strong presumption that the earlier items in the account have been satisfied; but this presumption may be rebutted.—*Raja Inayat Hussain*, 1*st July*, 1864.

APPLICATION OF PAYMENTS ON ACCOUNT.

186. When a plaintiff sues for rent for 1266, and there is an arrear for 1265, if the defendant proves only a general payment without showing that such payment was in satisfaction of the rent of 1266, the plaintiff has a right to apply such part of the money as was necessary, to satisfy the arrears of 1265.—*Robert Ahmuty*, 22*nd February*, 1864.—*Ram Nath Ray*, 30*th August*, 1864.

187. A payment for rent should be credited to the oldest arrear, unless the payer otherwise specifically direct.—*Adwaitya Charan Ray*, 13*th July*, 1863.

SETS-OFF.

188. The Revenue Courts are not competent to investigate a plea of *set-off* when the accounts which include the items on which set-off is claimed, have not been previously admitted by plaintiff, or when the matter of the set-off involves enquiries beyond the restricted jurisdiction of those Courts.—*Maulavi Abdul Ali*, 5*th October*, 1861.

189. The pottah provided for the credit to the lessee of excess payments and short collections, and of *all expenses incurred in cases connected with the farm, in the Criminal Courts.* HELD that the Revenue Court could not adjudicate upon a claim to a *set-off*, under this last provision, on account of costs incurred in a case of assault by plaintiff on defendant.—*Ishwar Chandra Saha*, 11*th July*, 1864.

190. In a suit for arrears, defendant pleaded, as a set-off, that a third party who was his debtor, had to receive a certain amount from plaintiff on account of some other property. It was held that such a claim was no set-off at all, and that no set-off can be listened to, but what arises immediately between plaintiff and defendant.—*Parvati Charan Pal*, 11*th June*, 1862.

191. Defendant pleaded that, by an understanding or agreement between him and the plaintiff, he (the defendant) was allowed to retain his rent in consideration of an expenditure by him on the plaintiff's account. HELD that the suit could not be decreed until this plea had been fully investigated.—*Jay Kunwar Dobain, &c.*, 3*rd February*, 1861, *and* 18*th July*, 1861.

192. The Collector may try the validity of a bond alleged to have been received by a tenant for money advanced to a landlord under which a portion of the rent is to be applied to the discharge of the bond.—*Mussamut Bichan*, 8*th April*, 1863, *and* 21*st July*, 1864.

* For proper Stamp, see Board's Rule I.

193. The Revenue Courts should deduct any portion of the rent paid to a creditor of the lessor under the lessor's express authority.—*Karmi Lal Thakur*, 18*th March*, 1863.

194. A suit for excess collections made under a lease according to the terms of which the lessee was to pay the Government revenue, and account for the surplus collections, and which provided for an annual measurement and assessment, was held to be cognizable in the Civil Courts, and not under Act X of 1859.—*Syad Shurkat Ali*, 23*rd April*, 1861.

DEFICIENCY OF AREA.—NON-POSSESSION.

195. A landlord cannot sue a tenant for rent of land which is, allowedly, not in such tenant's possession, and which, the landlord admits, he knows has been taken by Government for a public purpose.—*Ram Kishn Das*, 26*th March*, 1862.

196. But if the Government take land for public purposes without process of law, it is liable for the rent.—*Collector of* 24-*Pergunnahs*, 6*th August*, 1862.

197. A ryot is bound to pay the amount of rent which he has agreed to pay. If the ryot knew the land beforehand, it is no defence to a suit brought against him for rent that the area is less than that agreed for.—*H. D. Tripp*, 25*th July*, 1861.

198. A landlord who accepts rent from an old lessee holding over, cannot sue the new lessee for the same rent.—*Jay Dev Mahapatra*, 30*th August*, 1864.

199. A landlord who has collected rents direct from the ryots, cannot also sue his farmer for the amount.—*Rám Prasád Bhakat*, 31*st July*, 1863.

200. Dispossession *by a third party* does not absolve a tenant from his liability for rent to the landlord.—*Khwaja Abdul Ghani*, 23*rd April*, 1863.

201. The proviso in a kabúlyat that the tenant shall pay at pergunnah rates for any land found, on future measurement, to be in excess of the recorded area, is to prevent the tenant from encroaching on the private lands of his zemindar, and does not vary the strict terms of the lease binding the tenant to pay a certain rent for an area found by a prior measurement.—*J. A. Courjon*, 16*th February*, 1864.

RES-JUDICATA.

202. If a suit for the rent of any year has been dismissed, a second suit for the same rent in which the propriety of the order of dismissal is called in question, will not lie.—*Ishwar Chandra Bose*, 27*th March*, 1862.

203. The dismissal of a suit, otherwise than upon the merits, does not bar a fresh suit for the same cause.—*Rama Nath Ray Choudhary*, 12*th July*, 1865. *Dhanpat Singh*, 23*rd June*, 1864.

204. It is not competent to a zemindar to sue in the Civil Court to set aside a lease set up by a tenant and accepted by a Revenue Court in a suit for arrears of rent.—*Shah Aywar Ali*, 26*th November*, 1861.

205. A decree does not invalidate a written agreement to which it makes no reference.—*N. P. Pogose*, 6*th December*, 1861.

206. If a decree by the Civil Court is old and unexecuted, or if it is ambiguous, it does not bar the jurisdiction of the Revenue Court.—*Sayya Mani Devya*, 16*th December*, 1864.

207. A decision in a suit for rent as to the area of land held by defendant does not estop plaintiff from showing, in a suit for the rent of a subsequent year, that defendant holds a larger area.—*Bhajavant Jha*, 22*nd July*, 1862.

EFFECTS OF DECREE FOR POSSESSION, OR OF SALE IN EXECUTION.

208. The purchaser of a zemindary sold in execution of a decree is entitled to the rent due from the date of his purchase. If the tenants, *after due notice of purchase*, continue to pay to the former owner, they do so at their own peril, and cannot plead such payment in answer to the new owner's suit for rent. Such payments made even under an order of Court will not always be recognized.—*Collector of Rajshahye, &c.*, 26*th January*, 1864.—*J. Smith*, 2*nd December*, 1864.

209. If a party against whom a decree of the Civil Court has been given, be not ousted from possession in execution of such decree, he is entitled to collect rents, subject to account to the decree-holder for the same.—*Panchanan Banarjya*, 27*th March*, 1862.

210. The sale of an under-tenure under Section CV must prevail over a prior private sale.—*Messrs. Cohn, Feilman and Co.*, 14*th June*, 1862.

REAL AND OSTENSIBLE.

211. In a suit for rent against a real and an ostensible defendant, the Revenue Courts, under Act X of 1859, have power to determine which is the real lessee.—*Golok Chandra Babu*, 26*th June*, 1862.

212. A landlord cannot hold both the ostensible and the real lessee liable to rent, but must make his election. If he proves the ostensible lessee to be simply an agent for another, he can proceed against that other; or he may elect to sue the agent on his written contract, in which case he cannot go against the principal.—*Hira Lal Bakshi*, 11*th November*, 1862.—*Shekh Kamyab*, 24*th June*, 1864.

213. No suit lies against a person who is, admittedly, only an ostensible and nominal tenant.—*Lal Mohan Sen*, 29*th August*, 1865.

214. An ostensible lessor cannot recover rent of which payment is proved to have been made to the *real lessor.—Harak Panre, 24th June*, 1864.

Relation of Landlord and Tenant.

215. Before rent can be recovered in a suit under this clause, the plaintiff must establish the fact that the defendant is his tenant.—*Muhammad Asan Choudhary, 31st March*, 1864.

216. The defendant having admitted himself to be a ryot of the plaintiff for a portion of the land referred to in the suit, *the burden* of proving a plea that he was not plaintiff's ryot for the rest of the land was upon him.—*Guru Prasad Ray, 5th August*, 1862.

217. The mere denial by the defendant that he is tenant of the plaintiff, does not take the case out of the jurisdiction of the Revenue Courts. Such a plea must be established by proof, to have that effect.—*Hari Prasad Mali, 19th August*, 1862. *Purna Das, 22nd May*, 1865.

218. A tenant who has executed a kabulyat, cannot meet a suit under this clause by questioning his landlord's title.—*Mussamat Purnia, 24th June*, 1861.—*Digambari Dasi, 17th May*, 1865.

219. An arrangement for the payment of Government revenue through the vendor for a time, does not create the relationship.—*Golok Chandra Ray, 16th September*, 1861.

220. Though, as a general rule, a mortgagor and mortgagee do not stand in the relation of landlord and tenant, yet when the mortgagee executes a lease in favor of the mortgagor, stipulating to pay him a certain amount, annually, as rent, he is, as far as the payment of that sum is concerned, a tenant of the mortgagor, and must be sued for any arrears of such rent under Act X. of 1859.—*Bishwa Rup Dutt, 24th June*, 1861.

221. A zemindar may sue, under this clause, to recover arrears due from a talukdar who pays his revenue through him, under Section VI, Regulation VIII of 1763.—*Chandrakanth Chakravartti, 11th December*, 1865.

Claim of Rent-Free.

222. When the defendant sets up a claim to hold rent-free, the only issue is whether, as a fact, rent has been paid before the suit.—*Jodhi Singh, 8th March*, 1864.

223. The plea of rent-free cannot be admitted in bar of jurisdiction, without enquiry whether the allegation is founded on fact.—*Babu Kali Singh, 19th September*, 1864.

224. Before a suit for a kabúlyat, or for rent, can be brought on account of land hitherto held rent-free, the right to assess the land must be separately established.—*Muhammad Miyanat-ul-hak, 12th August*, 1861.—*Gumani Kazi, 1st June*, 1863. (Full Bench.)

225. A landlord cannot sue for the rent of resumed lands until they have been legally assessed.—*Devi Dutt Choudhary, 17th August*, 1864.

226. The Government erroneously included some chokidari lands in the assets upon which the revenue of their lessee was based. Held that this gave the lessee no right to demand rent from the chokidar, but he was entitled to an adjustment of his revenue.—*Govind Das Mahant, 15th August*, 1864.

227. When a plea of *rent-free* is made, the *onus* is upon the landlord to prove that the land has paid rent.—*Moji Lal Adak, 2nd February*, 1865.

228. A tenant alleging to hold land rent-free must specify precisely the lands that he so claims.—*Raja Satya Charan Ghosal, 3rd August*, 1865.

Sazawal.

229. As the law only contemplates the occupation, by a proprietor, of a defaulting tenant's tenure, by a sazawal, during the current year, the tenant is not liable for the short collections of a sazawal beyond that period.—*J. Dalrymple, 24th April*, 1862.

230. A landlord claiming the difference between what his Sazawal could collect and what is really due, must prove his collections by the clearest evidence.—*Ramapat Tewary, 21st July*, 1864.

231. A landlord having failed in a suit against his Sazawal for rents collected by him, cannot sue the tenants.—*Anand Mayi Devya, 4th February*, 1865.

Heirs of Lessee.

232. In a suit against the heirs of a deceased farmer for rent accruing after his death, it was held that the obligation to pay rent depended upon proof of occupancy, either actual or constructive. A decree against the heirs up to a certain year, though strong *primâ facie* proof that they continued in possession the following year, may be rebutted by clear evidence to the contrary.—*Khwaja Abul Hussain Khan, 23rd February*, 1862.

233. If the heirs of a lessee interfere, after his death, with the property leased, and act in a manner inconsistent with their having no interest in it, they are liable for the rent.—*Khwaja Abul Hussain Khan, 22nd August*, 1864.

House Rent.

234. A suit for *house rent*, and for ejectment of the tenant from the house, is not cognizable by the Revenue Authorities.—*Nawab Haji Muhammad Khan Kuzalbash, 28th June*, 1862.

235. But the mere existence of a house on land does not remove suit for the rent of the land from the Collector's jurisdiction.—*Shekh Nasar Ali, 5th July*, 1864.

236. Jurisdiction of the Civil Courts in a suit for the rent of a house and the land surrounding it.—*Bipra Das De, 26th November*, 1864.

237. A suit for rent of an indigo factory is not cognizable under this clause.—*Adwaitya Chandra Pal, 1st April*, 1863.

238. The erection of a building upon the land after the lease, does not bar the Collector's jurisdiction.—*Tarini Prasad Ghose, 9th January*, 1865.

239. The erection of buildings, except under a building lease, does not bar enhancement.—*Saroda Sundari Choudhary, 9th January*, 1865.

240. Lands leased as "homestead" are not in any way protected by the Sale Law.—*Nafar Chandra Saha, 14th July*, 1865.

Special Rents.

241. A suit for the right to erect golahs at certain ghats on the land, and also to collect certain duties from persons who used these ghats and golahs and for other purposes, was held not cognizable under this clause.—*Mr. James Forlong, 17th November*, 1862.

242. A suit for canal tolls does not lie under this clause.—*H. W. Garland, 11th August*, 1864.

243. Nor for the rent of a ferry.—*Mr. James Forlong, 15th May*, 1863.

244. A suit for the rent of a market lies.—*Gayatri Devya, 7th June*, 1864.

245. The terms of this clause are wide enough to extend the jurisdiction of the Collector in suits for rent, to cases of tenancies not strictly agricultural, provided the subject of the lease is land, and the rent issues from the land, and is due on account of, and for the use of, the land, whatever may be the purposes for which the surface of the land is used. When *the land* is leased for the erection of golahs, although the lease includes the right to levy golah duties, a suit will lie in the Collector's Court for rent under the lease.—*Robert Watson and Co., 6th April* 1864.

Presumed Waiver of Condition of Lease.

246. The receipt of instalments without the interest agreed for, is no waiver of the claim.—*Kali Kanth Bose, 30th July*, 1862.

247. Unless the judge find as a fact that it amounted to waiver.—*Din Dayal Paramanik, 30th March*, 1863.

248. Though, by the terms of the kabulyat executed by the defendant in the case, he was bound to pay rent at a particular place, yet the conduct of the plaintiff in receiving rent in places other than that mentioned in the kabulyat, raised a presumption that the original contract was subsequently varied.—*Rakhal Das Mukharjya, 29th April*, 1863.

249. The acceptance of rent, for 15 years, at a less rate than might have been demanded by title, justifies the presumption that this was done under an agreement.—*Purnima Choudhrain, 21st July*, 1864.

250. A condition, in a lease, that no rent will be charged for alluvial accretions will not stand good, if the lessor is compelled, by a *vis-major*, to pay rent for such accretions.—*Shekh Amir-ud-din Muhammad, 12th July*, 1865.

Shareholders.

251. In this case certain parties, the joint proprietors of a piece of land, covenanted that, at the end of the year, they would divide it, and that, if cultivation should have taken place before the partition was effected, rent should be paid according to a certain rate that was stipulated. Held that a suit does not lie for such rent under this clause.—*Amrit Choudhary, 20th March*, 1863.

252. A shareholder in a joint-undivided estate is *primâ facie* liable to his co-sharers for their share of the rent of any ground which he occupies individually.—*Guru Prasanna Ray, 26th August*, 1864.

253. A suit by some of several lessors against the tenant and other lessors claiming a right to recover a particular share of the rent, the whole of which had been credited to the tenant in account, by the other lessors, who were made defendants, is not a suit merely for arrears of rent due on account of land, within the meaning of this clause. It is partly a suit to try the right of several lessors as between themselves, and is therefore not cognizable under Act X of 1859.—*Lala Ishwari Prasad, 14th March*, 1864.

254. A shareholder cannot sue for his share of the rent without making his co-sharers parties.—*Syad Hydar Ali, 5th April*, 1864.

255. Some of several shareholders, under a deed which does not define the share of each shareholder and the rent appertaining to him, may, if the plaint specifies the share held, and the defendant do not deny it, bring a suit for their share of the rent, although the other shareholders do not join them or are not added as parties.—*Amrit Choudhary, 6th May*, 1864.

256. A suit for his share of the rent by a shareholder, in an estate held in coparcenary, will not stand if the tenant deny his share.—*Dharm Lal Singh, 8th July*, 1864.

257. A shareholder in an undivided estate as to whose share there is no doubt, can sue, separately, for his share of the rent.—*Muhammad Singh*, 2*nd December*, 1864.

258. Two shareholders who had hitherto collected the rent *jointly*, separated. HELD that payment of the whole rent by the ryot to one of them, barred any action by the other, unless notice of separation had been given to the ryot.—*Mussamat Akbar-un-nissa*, 11*th August*, 1864.

259. A shareholder in a joint undivided estate cannot sue for rents from ryots who have never paid rent to him, but have always paid, separately, to another shareholder.—*Jay Nath Nag*, 26*th August*, 1864.

LETTERS OF ADMINISTRATION.

260. To enable a person to institute or defend a suit in trust for a minor without first obtaining a certificate under Act XL of 1865, he must be specially allowed to do so by the Court, in the exercise of the discretion entrusted to it under Section III of that Act.—*Rakhal Das Mukharjya*, 9*th September*, 1863.

261. A certificate under Act XXVII of 1860 is not necessary to enable a man to carry on the suit of a deceased person, if the Court is satisfied that he is entitled to represent him.—*Syad Ikram Hossain*, 15*th May*, 1865.

SUITS FOR ENHANCED RENT.

262. A slight irregularity in the drawing up of a notice of enhancement need not invalidate it; the plaintiff is still entitled to a declaratory order reciting his right to enhancement after the issue of a proper notice.—*Ram Lochan Dutt*, 13*th July*, 1864. *Chandra Kumar Ray*, 12*th July*, 1864.

263. If a suit for arrears of enhanced rent fail on account of some irregularity, the Court cannot make any order as to the prospective liability of the defendant.—*Ishwar Chandra Ghosal*, 20*th August*, 1864.

264. In a suit to recover arrears of rent at enhanced rates, when the question of the liability of the tenure to enhancement has been put in issue and fully tried, a decree may be given *declaring the tenure liable to enhancement*, though notice of enhancement is not proved.—*Gumany Kazi*, 1*st June*, 1863. (FULL BENCH.)

INTERVENING DEFENDANT.

265. An intervenor claiming to be the real tenant, cannot be heard in a suit under this clause, but his rights are not prejudiced by proceedings to which he is not a party.—*Hara Mohan Mukharjya*, 6*th August*, 1864.—*Guru Dayal Panré*, 22*nd May*, 1865.

266. Such an intervenor should be heard if the defendant does not appear.—*Annoda Prasad Kund Choudhary*, 15*th June*. 1865.

267. An intervenor claiming to be the real tenant can, and should, be made a party to the case, the absence of any provision to this effect in the procedure provided by the Act notwithstanding.—*Ishwar Chandra Bhatacharyya*, 23*rd August*, 1865.

MISCELLANEOUS.

268. During the pendency of a suit for rent, the plaintiff procured an attachment of the growing crops; and afterwards, without authority, and before the suit was determined, carried off some of the crops. HELD that, though this was an act properly punished by the Court below, as a contempt, with a fine, it was no ground for dismissing the suit.—*Chattu Nath Singh*, 28*th July*, 1862.

269. A landlord having illegally attached, and so caused the loss of, a large proportion of the tenant's crops, the Court declined to give him a decree for the rent for that year.—*Ram Dayal Singh*, 30*th November*, 1864.

270. A tenant paying rent to the superior landlord, after the grant of an intermediate lease, but without notice of it, is not liable to the intermediate lessee in respect of the same rent.—*Attapai Mulla*, 21*st August*, 1862.

271. The *onus* of proving payment is upon a tenant asserting it. The landlord, and not the tenant, should have the benefit of any doubt.—*Mahabir Singh*, 19*th August*, 1864.—*Ishwar Chandra Acharyya*, 22*nd August*, 1864.

272. A suit against a lessee for rent, and, in default, against his surety, may be heard under this clause.—*Kumar-un-nissa Bigam*, 28*th June*, 1862.

273. A person to whom a zemindar has assigned the right to recover rents, may proceed under this clause for the recovery of the same.—*Syama Sundari Dasi*, 4*th December*, 1862.

274. The receipt of rent by the auction purchaser at the rate specified on the pottah, is no confirmation of an alleged mukarari tenure.—*Radha Kanth Dutt*, &c., 21*st January*, 1864.—*Jotendra Mohan Thakur*, 3*rd May*, 1864.—*Ram Sunker Sen*, 23*rd August*, 1865.

275. A suit for the realization of the balance of a decree obtained under Regulation VII of 1799, partly satisfied by the sale of the tenure itself, will not lie under Act X. of 1859.—*Raja Mahatap Chandra*, 12*th March*, 1863.

276. The admission of an agent that rent is due is not sufficient evidence to support a suit.—*Kali Kishwar Ray*, 21*th September*, 1863.

277. If a tenant set up a pottah in disproof of the amount of rent claimed by his landlord, the *onus probandi* is upon him.—*Mussamat Chandravati*, 23*rd June*, 1864.

278. The zemindar's payment having been credited by the Collector, not as Government revenue, but as a deposit, and the zemindar having taken a receipt accordingly, the patnidár was justified in paying the revenue into the Collectorate to save the estate from sale, and such payment by him was sufficient payment of the patni rent to the zemindar.—*Jotendra Mohan Thakur*, 11*th February*, 1864.

279. Neither a person who, on attaining his majority, has ratified a pottah granted by his guardian's gomáshta, nor a purchaser in execution of a decree at the Sheriff's sale of his right, and interest, can question the competency of the gomashta to give the pottah.—*Chandra Kanth Mukharjya*, 31*st March*, 1864.

280. A zemindar not being bound to recognize the sub-division of a holding, the purchaser of part of the holding is jointly liable with the other holders for the rent of the whole.—*Gukhan Sahay*, 7*th June*, 1864.

281. A title to hold land at fixed rates, which has been judicially established, cannot be disturbed upon the authority of a subsequent decree for arrears of rent which does not deal with the issue of title.—*Raj Rup Ray*, 23*rd June*, 1864.

282. Until a landlord has recognized the transfer of the rights of a tenant, he is entitled to rent from him, and his claim cannot be satisfied by an alleged transferee.—*Hara Mohan Mukharjya*, 26*th November*, 1864.

283. A vendee may defend a suit brought against a vendor for arrears said to be due before he sale.—*Shiva Narayan Bhatacharyya*, 5*th September*, 1861.

5. All suits* to eject any ryot, or to cancel any lease, on account of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled;

284. A suit does not lie under this clause to cancel a zar-i-peshgi lease.—*Muhammad Ali*, 30*th August*, 1864.

285. The appeal, in a suit under this clause, lies to the Judge, under Section 160.—*Kalibar Upadhyay*, 22*nd June*, 1864.

286. If a tenant holds over after the expiration of his lease, the operation of his lease does not cease, and a condition, therein contained, of ejectment in case of an arrear accruing, may be enforced.—*Hari Prasanna Ray*, 31*st December*, 1861.

287. In a suit to eject a tenant holding over, the tenant cannot question his landlord's title.—*Mahesh Chandra Biswas*, 25*th March*, 1863.

288. In a case of ejectment, if a third party pleads a permanent tenure conveyed to him by defendant, the *onus probandi* is upon him, and not upon the plaintiff.—*Lakshmi Narayan Paramanik*, 12*th June*, 1862.

289. A landlord cannot re-enter for default of the payment of rent for one year, if he have received the rent on account of a subsequent year.—*Shékh Pír Baksh*, 28*th July*, 1862.

290. A ryot is not liable to ejectment for a breach of any condition of his lease, unless it has been stipulated that ejectment is to follow a breach of that condition.—*Guru Prasad Sirkar*, 19*th March*, 1863.

291. When the original pottah contains a condition of re-entry by the zemindar for non-payment of rent, Section CV of this Act does not take away this right even if the tenure itself be saleable.—*Jay Durga Devya*, 13*th April*, 1863.

292. The Courts are to administer equitable relief to avoid the hardship of forfeiture.—*Syam Chandra Saha*, 22*nd March*, 1864.

293. The lease of a fishery conveys no interest in the soil under the water, and if the water dries up, the lessor may enter upon the dry bed.—*Messrs. Jardine, Skinner & Co.*, 9*th March*, 1863.

294. A suit by a landlord to eject an occupant whom he does not acknowledge to be his tenant, lies to the Civil Court.—*Mussamat Tara Mani Dasi*, 8*th September*, 1864. *Beni Madhav Banarjya*, 6*th September*, 1865.

295. If the defendant claim to be the tenant of another landlord, who sets up an adverse title, the suit lies to the Civil Courts and not under this clause.—*Fakir Rahman*, 29*th November*, 1864.

296. A suit for possession may be brought in the Civil Court, notwithstanding a previous suit for rent on account of the lands in the Revenue Courts.—*Brajendra Kumar Roy Choudhary*, 29*th November*, 1861.

297. A suit by a *landholder* to recover possession of land from which he had been ousted by a tenant, who after having executed a kabuliyát, and paid him rents for a series of years, ceases

* For proper Stamp, see Board's Rule I: See also Section LXXVIII.

to pay and so evicts him, may be brought in the Civil Court—*Shiva Prasad Chakravartti*, 9*th June*, 1864.

6. All suits* to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same;

298. Mesne profits cannot be recovered in a suit under this clause.—*Ratanmani Dasi*, 13*th February*, 1863.

299. A suit to recover possession of land, if mesne profits be claimed simultaneously, may be brought in the Civil Courts, anything in this Section to the contrary notwithstanding.—*Ram Lochan Das*, 8*th January*, 1864.

300. In a suit for possession under this clause, the intervention of a third party claiming a right to the tenure, does not take the case out of the Collector's cognizance.—*Karuna Kanth Choudhary*, 10*th July*, 1863.

301. An intervenor cannot be heard in a suit preferred by a tenant under this clause, to recover possession of his tenure.—*Adya Prasad Chakravartti*, 11*th August*, 1863.

302. The Court has not only to consider which party was in possession, without reference to the right to possession. The plaintiff must establish the fact that he has a *right* to be reinstated.—*Madar Khan*, 27*th March*, 1863.

303. An ejectment is illegal, although the title of the tenant be bad, until the landlord have established the fact.—*Thakur Das Majumdar*, 6*th January*, 1865.

304. If the defendant does not dispute the tenancy of the plaintiff, the proper issue for trial is not whether he had a right of occupancy under Section 4, but whether the plaintiff was illegally ejected or not. If the ejectment was illegal, the plaintiff is entitled to recover possession, leaving the defendant to apply to the Collector to eject him under Section 25, if the plaintiff be a ryot without a right of occupancy.—*Mussamat Taj Bibi*, 23*rd June*, 1864.—*Chandra Sikhar De*, 8*th July*, 1864.

305. A tenant who has a right to possession, may sue under this clause, although he may not have a right of occupancy under Section 6.—*Robert Watson & Co*, 10*th April*, 1863.

306. In a suit for illegal ejectment, although the plaintiff's pottahs were bad, yet the Court ought not to decide the case against him without trying the question as to whether he had a right of occupancy, when such a question clearly arises from the pleadings.—*Baidya Nath Tewari*, 17*th February*, 1864.—*Baidya Nath Saha*, 16*th August*, 1865.

307. There is no right of action under this clause, unless the ejectment is *illegal*; and it does not at all follow that an ejectment is illegal because recourse has not been had to the Courts.—*Raghu Nandan Singh*, 27*th September*, 1864.

308. In a suit under this clause, the plaintiff's title to obtain possession cannot be decided irrespective and independent of the fact of possession and of illegal ejectment.—*Pitambhar Mukharjya*, 4*th August*, 1863.

309. There must have been *possession* and *ejectment*. A suit to compel a lessor to give possession under a lease not yet acted upon, lies to the Civil Court and not to the Collector under this clause.—*Jadu Nath Ghose*, 21*st November*, 1864.

310. The purchaser of an under-tenure sold in execution of decree, cannot obtain possession from the zemindar under this clause.—*Jagabandhu Mallik*, 15*th August*, 1864.

311. Nor a purchaser by private sale: he must proceed in the Civil Court.—*Kanhai Mulla*, 15*th August*, 1865.

312. The Collector has jurisdiction in a case where the zemindar opposes the entry of the purchaser of a transferable ryot's tenure.—*Digambari Devya*, 10*th June*, 1864.

313. A suit cannot be brought under this clause by a person alleging himself to be the heir of an evicted ryot, if the zemindar denies his title as heir.—*Haricharan Lashkar*, 14*th April*, 1864.

314. The suit must be by persons claiming to hold the land from the ejectors as their tenants or farmers.—*Robert Watson & Co*, 13*th March*, 1863. The alleged dispossessor must be the landlord.—*Karuna Mayi Dasi*, 17*th February*, 1864.

315. The Civil Courts have no jurisdiction in a case of ejectment or dispossession of a tenant by act of his landlord.—*Babu Madhav Ray*, 12*th August*, 1864.

316. But if the landlord acts jointly, or in concert, with a third party, the suit lies in the Civil Court.—*Lakshmi Priya Devya*, 15*th May*, 1865.

317. In cases of ejectment, the tenant seeking to recover possession, is not bound to bring his suit under this clause, except where the ejectment has been the direct act of the zemindar entitled to receive the rent, or of his servant acting under his orders. Where third parties, with whom the tenant has no privity, eject him on the allegation of holding a lease from the zemindar, neither

* For proper Stamp, see Board's Rule I.

would such allegation, nor even the fact of their holding such a lease, nor any subsequent ratification of their acts by the zemindar, oblige the tenant to bring his suit in the Collector's Court.—*Jaykishn Mukharjya, 24th June*, 1864.—*Makbul Hussain, 24th June*, 1864.

318. A suit lies under this clause against a landlord, who, by fraudulently granting a fresh lease, and colluding with the fresh lessee, prevents his real tenant from collecting the rents or obtaining decrees against the ryots under this Act. The jurisdiction of the Collector is not affected by the collusive lessee being made a party to the suit.—*Brajeshwari Dasi, 10th July*, 1863.

319. No suit lies under this clause by a ryot ousted by a shareholder without whose consent he had been inducted.—*Ganesh Ram Singh, 5th December*, 1865.

320. An ejectment was not illegal, because it took place before the farmer ousting obtained a pottah from Government.—*Mr. Robert Morell, 3rd December*, 1863.

321. Disturbing or dispossessing the cultivators is, in effect, ejecting, and disturbing in the receipt of rent, the farmer to whom they pay their rent.—*Sangat Mahto, 23rd April*, 1864.

322. A Shikmi Talukdar can sue to recover possession under this clause.—*Raj Chandra Sarmma Gosain, 29th July*, 1861.

323. A ryot ousted by order of a Magistrate under Section 318, Act XXV of 1861, is not bound, in a consequent suit against his landlord under this clause, to refer to the Magistrate's proceedings.—*Srimati Lakshmi Devya, 25th April*, 1864.

324. An ejectment may be illegal, as between the landlord and tenant, though effected by the Magistrate, and the suit would lie under this clause.—*Bhagirath Chandra Das, 5th December*, 1864.

325. An amldastak given in anticipation of a written lease is not equivalent to a lease, and confers no title.—*Munshi Khadim Hussain, 3rd December*, 1864.

326. The provisions of this clause, which restrict to the Collector's Court all suits to recover the occupancy of land from which a ryot has been dispossessed by the person entitled to receive rent for the same, must be considered to apply equally to cases in which the tenant words his suit as for confirmation of possession, and brings the suit against the persons entitled to receive rent in order to settle the question of right to possession.—*Guru Charan Kumar, 7th June*, 1864.

7. All suits* arising out of the exercise of the power of distraint conferred on zemindars and others by Sections cxii and cxiv of this Act, or out of any acts done under color of the exercise of the said power, as hereinafter particularly provided;—

327. A party sued against a distraint, denying the rent claimed, the burden of proof was on him; as he failed to prove his allegation, it was not necessary to consider the proofs adduced by the defendant.—*Shekh Khuda Baksh, 12th June*, 1862.

328. An action will lie under this clause, by an under-tenant upon whom a distress is made for the rent of his lessor, the crop distrained having been sold by the distrainor without giving the notice required by the Act. It is sufficient to show that the act complained of was done by the defendants in exercising the powers of distraint conferred by this Act.—*Nundaza, 29th January*, 1863.

329. A suit lies against a gomashta personally who distrains without a written power of attorney (*vide* Section cxliii). But if he acts under orders from his master, or if the master receives the proceeds, the master too may be sued.—*Kali Mohan Ray Choudhary, 13th February*, 1863.

shall be cognizable by the Collectors of land revenue, and shall be instituted and tried under the provisions of this Act, and, except in the way of appeal as provided in this Act, shall not be cognizable in any other Court, or by any other officer, or in any other manner.

330. For the nature of the jurisdiction of a Collector's Court, see—*Uma Charan Dutt, 6th January*, 1866.

331. The jurisdiction extends over *fisheries*.—*Pran Sautra, 3rd February*, 1866.

332. Only those portions of the Code of Civil Procedure apply to rent suits which are, by the Rent Laws, specially declared applicable.—*Dayal Chandra Ghose, 16th September*, 1862.

333. Acts done without jurisdiction are of no legal effect at all, and must be set aside.—*Guru Prasad Ray, 5th August*, 1862.

334. A Judicial Officer may not import his own private knowledge or opinions into a case, but must simply decide the issue before him, and on the evidence before him.—*Mihr-un-nissa, 21st January*, 1865.

335. A suit concerning land situated in the *revenue* jurisdiction of one district, and the *civil* jurisdiction of another, is properly instituted before the Collector of the revenue district;

* For proper Stamp, see Board's Rule I.

but the appeal will lie to the Judge within whose civil jurisdiction the land is situated.—*Latif-unnissa Bibi*, 22*nd August*, 1862.

336. Every suit must include the whole of the claim arising out of the cause of action, and if any portion be not included in the suit, it cannot be afterwards sued for.—*Rani Bhava Sundari*, 24*th June*, 1864.

337. Arrears of rent for successive years are, however, several and distinct causes of action, and need not be included in the same suit.—*Raja Satya Charan Ghosal*, 25*th January*, 1865.

338. Separate suits cannot be brought for the rent of separate parcels of land held under one lease.—*Raja Ajodhya Ram Khan*, 27*th January*, 1865.

339. A plaintiff cannot lump up in one suit several distinct claims.—*Murad Ali*, 21*st February*, 1863.

340. The Court should dismiss a suit brought against several defendants with no common tie, as multifarious and defective, even though the plea be not raised.—*Ganesh Prasad*, 24*th June*, 1861.

341. A statement under Act VIII of 1859 is not in the nature of confession and avoidance as in English pleadings, where the confession is considered as an admission of the party, and the avoidance has to be proved. The statement of a party, if it is used as evidence against him, must be taken altogether, and not in part. A general custom is not proved by the statements of two individuals, or by proving that two particular tenants pay at a particular rate.—*Lala Prabhu Das*, 14*th March*, 1864.

342. The death of one of the parties to a suit does not abate the suit, unless the case is, in any way, prejudiced thereby.—*Jagamohan Singh*, 13*th April*, 1864.

343. The finding of a Court cannot be questioned in a Court of concurrent jurisdiction.—*Nava Kumar Bhattacharyya*, 22*nd June*, 1864.

344. A suit dismissed in the presence of both parties, for want of proof, is dismissed *upon the merits*, and a fresh action does not lie for the same cause.—*Muhammad Choudhary*, 20*th December*, 1864.

345. A plaintiff is bound to prove his case as laid in the plaint; a plaintiff having relied upon a document which is rejected by the Court, cannot be permitted subsequently to set up a fresh case.—*Sannu Karigar*, 8*th August*, 1862.—*Nara Hari Muhant*, 12*th August*, 1862.—*Guru Das*, 31*st March*, 1864.

346. A suit to eviet defendant on the allegation that he was a trespasser who had occupied land deserted by plaintiff's ryot, defeated by proof that the ryot had sublet ; and the plaintiff not allowed to prove that the ryot had not a right to sublet.—*Surendra Nath Ray*, 11*th August*, 1864. —*(But see Haramohan Mukharjya*, 17*th January*, 1865.*)*

347. The entire claim of a plaintiff should not be dismissed only because a portion of it is proved to be false.—*Kunja Bihari Banarjya*, 21*st September*, 1864.—*Bengal Indigo Company*, 1*st August*, 1865.—*Gorachand Kalu Sadhukhan*, 2*nd August*, 1865.

348. The Court of first instance having declared a pottah on which the plaintiff relied to be forged, the Appellate Court could not decree the case without disposing of the issues thus raised.—*Kamal Kishn*, 25*th April*, 1864.

349. The plaintiff sued the defendant for rent, basing his claim upon a kabulyat; his suit was dismissed, and the kabulyat pronounced to be spurious. HELD that he was not estopped from afterwards suing the same defendant to set aside a pottah under which the defendant claimed, the validity of the pottah not being in issue in the former suit.—*Una Nath Ray Choudhary*, 30*th July*, 1862.

350. A ryot having denied the existence of a pottah in one suit, cannot produce and rely upon it in another. But the filing by the landlord of a kabulyat in the former suit does not involve, of necessity, his admission of the pottah.—*Sayad Muhammad Hussain*, 19*th July*, 1864.

351. The object of the Act is to comprehend in one Code all questions relating to rent that can arise between landlord and tenant of every degree.—*Hara Kishn Banarjya*, 10*th December*, 1864.

352. There can be no suit under this Act where there is not either an actual or implied relationship between the parties of landlord and tenant.—*Raghu Nath Sahay*, 26*th August*, 1864.

353. That the plaintiff has ceased to be a landholder since the cause of action, does not remove the case from the Collector's jurisdiction.—*Muhammad Kadir*, 1*st July*, 1864.

354. But a landlord cannot get rid of the jurisdiction of the Revenue Courts, under the Act, by merely refusing to take rent from a tenant, or by declining to acknowledge that tenant's rights.—*Thakur Das Majumdar*, 6*th January*, 1865.

355. A manager of an attached estate cannot create the relation of landlord and tenant, and a suit arising out of a pottah granted by him lies to the Civil Court.—*Sri Gopal Pal Choudhury*, 20*th November*, 1865.

356. Dependent talukdars are tenants.—*Robert Watson and Company*, 3*rd February*, 1866.

357. Act X of 1859 does not apply to a suit by a zemindar against a ghâtwal for lands held in excess of his tenure. In such a case the issue is the title to the lands, and that is not a question for the decision of the Revenue Courts.—*Ganga Narayan Sen*, 16*th December*, 1863.

358. If a claim that is maintainable in the Collector's Court only, is refered to arbitration, the Civil Court cannot enforce the award.—*Sushi Bushan Saha*, 24*th January*, 1866.

XXIV. Suits* by zemindars, and others in receipt of the rent of land, against any agents employed by them in the management of land or collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession, shall be cognizable by the Collectors, and shall be instituted and tried under the provisions of this Act, and shall not be cognizable in any other Court except in the way of appeal as provided in this Act.

Suits by zemindars against their agents for money or accounts.

359. Does not apply to amlah and other servants who are not agents employed in the management or collection of rents.—*Lala Ratan*, 17*th February*, 1863.

360. An agent employed in making settlements, giving leases &c., and, in this capacity, receiving rents direct from the lessees, may be sued under this Section.—*Lala Jivan Lal*, 2*nd July*, 1864.

361. A suit lies under this Section against a relative who acts as Sarbarahkar, has the entire management of property, and gives receipts for rents collected by his tahsildar.—*Sukh Lal Tewary*, 16*th July*, 1864.

362. A suit does not lie under this Section for the recovery of rents collected by a person without authority, who has not been recognized as agent by the landlord.—*Sital Kishta Ray*, 4*th May*, 1863.

363. A shareholder who collects the rents is not an agent employed in the management of land or collection of rents within the meaning of this Section.—*Kuni Ram Purka*, 21*st September*, 1863.—*Subhal Singh*, *&c.*, 17*th February*, 1864.

364. The suit under this Section lies none the less, because the defendant may be amenable to the Criminal Courts.—*R. Skinner & Co.*, 8*th May*, 1865.

365. The heirs of the deceased surety of an agent sometimes continue liable to the extent of the property which they inherit.—*Srimati Rani Mohima*, 30*th April*, 1864.

366. A person not in receipt of the rent, and not the employer of the agent, cannot sue under this Section.—*Zamir Mandal Gomashta*, 29*th January*, 1866.

367. An intervenor cannot be made a party under this Section.—*Rani Manjura Dhai*, 13*th February*, 1865.

XXV. If any zemindar, or other person in receipt of the rent of land, require assistance to eject any cultivator, not having a right of occupancy,—or to eject any farmer, or other tenant, holding only for a limited period, after the determination of his lease or tenancy,—or any agent, after the determination of his agency,—or to enforce any attachment or ejectment expressly authorized by any Regulation or Act,—he shall make application* to the Collector, and the Collector shall proceed, thereupon, to enquire into the case, and pass orders in the manner provided for suits under this Act: Provided that no such application for the ejectment of a farmer on the determination of a lease, shall be received, if the lease be of the kind denominated thika zar-i-peshgi, or the like, in which an advance had been made by the lease-holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance, either in money or by the usufruct of the land. In all such cases, the parties must proceed by suit in the Civil Court.

Ejectment of cultivators, farmers, &c., by zemindars.

Proviso.

368. This Section is not applicable where there is any dispute as to the title of the tenant.—*Jay Kishn Mukharjya*, 14*th January*, 1865.

369. A Collector has no jurisdiction, upon an application for ejectment under this Section, to interpret the terms of a deed of compromise made between the parties before him in a civil suit.—*Dasharati Patnaik*, 28*th June*, 1862.

370. A zemindar is not always obliged to apply to the Collector, under this Section, for assistance, whether he requires such assistance or not. A tenant ejected by the zemindar without application made to the Collector, is not, on that account, illegally ejected, unless it is proved that the landholder took any illegal measures to eject the tenant.—*Sheo Ratan Singh*, 11*th May*, 1864.

371. This Section does not preclude a zemindar, or other person in receipt of the rent of land, from asserting his rights in the Civil Courts, instead of applying to the Collector for assistance.—*Madan Mohan Ray*, 21*st August*, 1863.

372. A suit to contest the orders of a Collector under this Section, may be brought under Section xxiii, cl. 6, or in the Civil Court, as the case may be.—*C. J. Phillip*, 19*th June*, 1863.

* For proper Stamp, see Board's Rule I.

373. A person ejected under this Section can sue in the Civil Court to establish his right, whether he be a party to the original proceeding or not.—*Joti Ram Kuora*, 1*st August*, 1865.

374. An appeal from an order of the Collector passed under this Section, lies to the Commissioner, and not to the Judge.—*Ram Kumar Mukharjya*, 22*nd August*, 1861.—*Mir Muhammad Taki Choudhary*, 17*th June*, 1861.

375. A zemindar, installed by the Collector under this Section, must be held to be in actual possession and enjoyment of the estate.—*Mahesh Chandra Pal Choudhary*, 14*th June*, 1862.

376. If a tenant holds over after the expiration of his lease, the operation of the lease does not cease, and a condition, therein contained, of ejectment in case of an arrear accruing, may be enforced.—*Hari Prasanna Ray*, 31*st December*, 1861.

377. A zemindar can oust a tenant in execution of a decree for arrears of rent under Act X. of 1859: he can also, under Section cv, bring to sale a transferable under-tenure; in which case all prior liens on the estate are valueless, so long as the rents decreed to be in arrears remain unpaid. But if, instead of selling the under-tenure, he puts up to sale and purchases his defaulting ryot's "rights and interests" in the land, which have already been sold under a decree of the Civil Court, and bought by a party for valuable consideration, he cannot be allowed to oust that party.—*Maháraja Satish Chandra Ray*, 24*th June*, 1864.

378. An auction purchaser cannot eject a ryot with a right of occupancy, except as prescribed in this Act.—*Devi Bhakat*, 12*th July*, 1864.

XXVI. *Repealed. Sections ix, x, and xi, Act VI of* 1862, *(Bengal Council,) substituted.*

Registry of transfers of taluks, &c.

XXVII. All dependent talukdars, and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivator, are required to register in the sarrishta of the zemindar or superior tenant to whom the rents of their taluks or tenures are payable, all transfers of such taluks, or tenures, or portions of them, by sale, gift, or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers, when made in good faith, and to all such successions and divisions. If any zemindar or superior tenant refuse to admit to registry, or otherwise give effect to, any such transfer or succession, the transferee or successor may make application* to the Collector, and the Collector shall, thereupon, proceed to enquire into the case in the manner provided for suits under this Act; and, if no sufficient grounds are shown for the refusal, shall pass an order enjoining the zemindar or superior tenant to admit to registry, and otherwise give effect to, such transfer or succession: Provided that no zemindar or superior tenant shall be required to admit to registry, or give effect to, any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zemindar or superior tenant.

Proviso.

379. This Section does not apply to a person who does not possess an intermediate transferable right between the zemindar and the cultivator, but stands in the place of the cultivator himself whose rights and interests in the land he has bought. He is, therefore, not compelled to notify his purchase in the proprietor's register.—*Maharaja Satish Chandra Ray*, 24*th June*, 1864.

380. The proprietor of a tenure whose name is registered in the landlord's office, is not exempt from the payment of rent, although he has not possession of the tenure, unless he can show that he was ousted by the landlord.—*Mussamat Mohan Mala*, 27*th March*, 1862.

381. But if a landlord has recognized a transfer by receiving rent from the transferee for a lengthened period, he cannot, although the transfer may not have been registered in his office, hold the original owner responsible, and ignore the rights of the transferee.—*Nava Kumar Ghose*, 15*th July*, 1864.

382 The transfer of a holding in a Government estate is good if registered by the farmer, and passively sanctioned by the Government, the Collector making a mutation of names.—*Hara Mohan Mukharjya*, 22*nd December*, 1864.

383. Unless the authority of a farmer is restricted expressly by contract, or by the act of the zemindar, or by the custom of the country, he is authorized, in good faith, to sanction the sub-division of a holding, and the zemindar cannot subsequently refuse to acknowledge the transaction.—*Hara Mohan Mukharjya*, 20*th January*, 1865.—(FULL BENCH.)

384. Where a tenure is not transferable, and the transfer has not been consented to, or adopted, by the landlord, the landlord is entitled to treat the ryot as a trespasser, and to eject him

* For proper Stamp, see Board's Rule I.

even in the middle of the year. But, if a tenure is transferable, the mere absence of registration or of acknowledgment of the zemindar's right by the ryot, will not make the ryot such a trespasser as to justify the zemindar in evicting him in the middle of the year.—*Hara Mohan Mukharjya*, 17*th January*, 1865.

385. An unauthorized transfer does not give the landlord a right of re-entry.—*Jay Kishn Mukharjya*, 12*th March*, 1866.

386. A landlord is not bound to register the sub-division of a holding.—*Robert Watson & Co.*, 21*st August*, 1865.

387. The appeal lies to the Commissioner.—*Mir Mahammad Taki Choudhary*, 17*th June*, 1861. But *Semble*, an appeal lies to the Civil Court if the landlord denies the tenancy of the transferee.—*Mussamat Tara Mani Dasi*, 8*th September*, 1864.

Applications to dispossess grantees of land exempt from revenue.

XXVIII. So much of Section x, Regulation XIX, 1793, Section x, Regulation XLI, 1795, Section vi, Regulation XXXII, 1803, Section xxi, Regulation VIII, 1805, and Section xxiv, Regulation XII, 1805, as authorizes and requires proprietors and farmers of estates and dependent taluks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Section, of their own authority, to collect the rents of such land; and to dispossess the grantees of the proprietary right in the land; and to re-annex it to the estate or taluk in which it may be situate,—is repealed; and any proprietor or farmer who may desire to assess any such land, or to dispossess any such grantee, shall make application* to the Collector, and such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years from the time when the title of the person claiming the right to assess the land or dispossess the grantee, or of some person claiming under him, first accrued. [*An obsolete paragraph is here omitted.*]

388. An application to the Collector under this Section is a suit, and the appeal lies to the Judge, not to the Commissioner.—*Bishwambhar Misr*, 18*th March*, 1863.

389. In order to entitle a landowner to recover possession of rent-free lands, on the ground that such land is not rent-free but rent-paying, he must show that rent has been paid for the land since the decennial settlement.—*Tarini Prasad Ghose*, 10*th December*, 1862.

390. A suit under this Section cannot be maintained upon the ground that the tenant holds under an invalid tenure, but on the ground that he holds under a tenure invalid *for the reason mentioned in Section* 10, *Regulation XIX of* 1793, viz., that the grant under which he holds was made after 1st December, 1790.—*Maharani Indrajit Kunwar*, 19*th February*, 1863.

391. In a suit brought under this Section, if it be proved that the tenure was created before 1st December, 1790, the Revenue Courts have no authority to try its validity or otherwise, or any question bearing upon that issue.—*Ram Nidki Baidya*, 18*th March*, 1864.

392. If a landholder claims lands as part of his estate, *i. e.*, asserts that the tenure has been created since 1790, and that the lands are rent-paying lands, he is bound to prove his allegation, and show that the ryot has paid rent for the land in question some time since the decennial settlement. The landholder having, in a suit under this Section, failed to prove payment of rent, cannot bring a suit *for the same thing* in the Civil Court.—*Dwarika Nath Samant*, 30*th June*, 1864.

393. Suits for the assessment or resumption of lands alleged to be held on invalid lakheraj titles created since 1790, must be brought under this Section; the ground of such actions necessarily being that the land in question at one time formed part of the plaintiff's estate. But suits for the resumption of other rent-free tenures, on the ground of invalidity of title, must be brought under Section 30, Regulation II of 1819, the presumption in such cases being that the tenure was in existence previous to 1790, though its validity is open to attack. If a plaintiff first sues under this Section, and fails to prove that the land formed part of his permanently settled estate, he is not debarred from bringing an action under Section 30, Regulation II of 1819, in the Civil Court to try the validity of the lakherajdar's title. But, by so doing, he admits the existence of the tenure as rent-free from the time of the decennial settlement, of which proof need not be required from the defendant, and the defendant's plea of limitation (if advanced) will be fatal to the claim, unless the plaintiff can show that he is an auction purchaser, and has brought his claim within 12 years of his purchase.—*Ram Charan Dutt*, 30*th June*, 1864.—*Jay Kishn Mukharjya*, 15*th July*, 1864.—*Shekh Miyajan*, 9*th August*, 1864.

394. This Section does not bar the ordinary jurisdiction of the Civil Courts in such cases. The jurisdiction given to the Revenue Courts is concurrent only, not exclusive.—*Sonatan Ghose*, 25*th Jany.*, 1865.—(FULL BENCH.)

* For proper Stamp, see Board's Rule I.

395. Whether, however, a plaintiff proceed in the Civil or the Revenue Courts, the *onus*, if the suit was instituted before December 1861, is upon him to prove that the land was assessed to revenue at the permanent settlement.—*Sonatan Ghose*, 22*nd February*, 1865.—(FULL BENCH.)

396. And the illegal ejectment of the lakhirajdar will not shift the *onus*, which, in the lakhirajdar's action for reinstatement, will still be on the zemindar;—*Jogeshwar Dass Ray*, 29*th March*, 1865—except under peculiar circumstances.—*Nava Kumar Mukharjya*, 13*th March*, 1866.

397. In a suit in the Civil Court, instituted by an auction-purchaser, after Act XIV of 1859 came into operation, the *onus* is upon the defendant to prove his rent-free holding since the permanent settlement; but this *onus* must not be imposed harshly.—*A. J. Forbes*, 31*st May*, 1865.—*Syam Lal Ghose*, 4*th August*, 1865.

398. Suits for the assessment of land alleged to have been unassessed at the permanent settlement are barred by limitation.—*Hara Mani Deiya*, 22*nd February*, 1865.—(FULL BENCH.)

399. For a clear resumé of the state of the law, see—*Khelan Chandra Ghose*, 27*th March*, 1865.

400. A suit in the Civil Court is, under Act XIV of 1859, Section X, Clause 1, subject to the same limitation as a suit under this Section.—*Krishta Mohan Das Bakshi*, 19*th May*, 1865.

401. Zemindars are barred by Section X, Regulation XIX of 1793, from granting lands rent-free. A grant of land, however, rent-free, for a consideration beneficial to the estate in general, and therefore tending to the security of the revenue, is not prohibited, and is valid.—*Fazir-ud-din*, 9*th January*, 1865.—(FULL BENCH.)

402. The consideration must be clearly *proved*, and will not be *presumed*.—*Chandra Kanth Chakravartti*, 3*rd August*, 1865.

403. A zemindar is not entitled to resume lands in excess of 100 beegahs held under one deed. In order to start a suit for possession or assessment under this Section, plaintiff ought to make out a *primâ facie* case of the commencement of the rent-free holding after 1790.—*Hari Har Mukharjya*, 21*st December*, 1863.

404. A patnidar is entitled to exercise all the rights of ownership with respect to the land which the zemindar himself might, but for the patni, have exercised.—*Gya Ram Mandal*, 29*th July*, 1862.

405. The Collector having, under an erroneous conception of the purport of Act VII of 1862 (B. C.), transferred a suit to assess rent-free land claimed as part of a zemindary to the Civil Court, the High Court directed him at once to try the case under this Section, *de novo*.—*Ram Prasad De*, 11*th August*, 1864.

406. A right of action which is barred by limitation under this Section, does not revive upon the succession of an heir to the person who has lost the right.—*Nabi Baksh*, 27*th July*, 1864.

Suits by, or against, sarbaráhkárs or tahsildars of estates held khas.

XXIX. All suits which, under the provisions of this Act, may be brought by, or against, zemindars or other persons in the receipt of the rent of land, may be brought by, or against, sarbaráhkárs or tahsildars of estates held under khas management, whether such estates are the property of Government, or of individuals. If the Collector, or the sarbaráhkár or tahsildar of any such estate in the Provinces of Bengal, Behar, and Orissa, proceed against any defaulting ryot or under-tenant of such estate under the powers vested in him by Section XXV, Regulation VII, 1799,* and not according to the provisions of this Act, such ryot or under-tenant may contest the demand on account of which he is so proceeded against, by suit in the Civil Court.

Time for commencement of suits generally.

XXX. Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action.

407. Act X of 1859 is a code complete in itself, and, where it prescribes a special limitation, the general law does not apply.—*Nathu Nashya*, 17*th September*, 1864.

408. The general law of limitation contained in Act XIV of 1859 does not supersede the special law of limitation contained in this Act.—*John Poulson*, 18*th January*, 1865.—(FULL BENCH).

409. The provision of Section 14, Act XIV of 1859, in favor of a person who has, *bonâ fide*, prosecuted his suit in a wrong Court, does not apply to suits under this Act, which are expressly exempted from the operation of Act XIV of 1859, by Section 3 of that Act.—*Sodamini Dasi*, 19*th July*, 1864.—*Purnima Choudhrain*, 21*st July*, 1864.

410. A patni sale was, after long litigation, set aside as irregular. HELD, that the time occupied in these proceedings could not be deducted in reckoning the period within which, under the law of limitation, an action could be brought for the original arrears.—*Kishta Nath Ray*, 19*th August*, 1864.

* See Board's Rule XI, 13, and Appendix A.

411. A defendant pleading limitation must prove the *facts* upon which he bases his plea.—*Srishtidar Majumdar Choudhary*, 24*th September*, 1864.

412. But plaintiff must prove when his cause of action arose.—*Ram Narayan Singh*, 16*th November*, 1865.

413. Limitation cannot be pleaded, for the first time, orally, in appeal.—*Collector of Rajshahye*, 26*th January*, 1861.

414. Limitation cannot be pleaded in appeal if not pleaded in the Court of first instance. Upon the point of limitation, Act XIV of 1859 does not override this Act.—*Adwaitya Charan Ray*, 13*th July*, 1863.

415. If the law applicable to the case expressly bar jurisdiction in case of limitation, the Court must stay proceedings whenever the defect is discovered. If it is *optional* with the defendant to plead limitation, he must plead it at first, or not at all.—*Kishn Chandra Chatterjya*, 16*th December*, 1865.

416. A tenant derives his title from his landlord; and cannot, therefore, resist a suit by his landlord questioning that title, by pleading limitation.—*Srishtidhar Majumdar Chowdhary*, 24*th September*, 1864.

417. The presentation of an unverified Statement of Claim will not save limitation.—*Abu Bibi*, 6*th December*, 1865.

418. In counting limitation for an appeal, the day of the decision to be appealed against is not reckoned.—*Radhamani Choudhrain*, 20*th December*, 1865.

XXXI. Suits for the delivery of pottahs or kabulyats, and for the determination of the rates of rent at which such pottahs or kabulyats are to be delivered, may be instituted* at any time during the tenancy.

Time for commencement of suits for grant of pottahs, &c.

XXXII. Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeth of the Fasli or Wilâyati year in which the arrear claimed shall have become due. [*An obsolete paragraph is here omitted.*] Provided that if the suit be for the recovery of rent at a higher rate than was payable in the previous year, such rent having been enhanced after issue of notice under Section xiii, and the enhancement not having been confirmed by any competent Court, the suit shall be instituted within three months from the end of the Bengali year, or of the month of Jeth of the Fasli or Wilâyati year, on account of which such enhanced rent is claimed.

Time for the commencement of suits for arrears of rent.

Proviso.

419. Neither under this Section nor under Act XIV of 1859 can more than three years' back rent be recovered.—*J. G. Bagram*, 1*st July*, 1862.

420. No deduction whatever can be allowed in computing the three years' limitation prescribed by this Section.—*Dukhina Devya*, 20*th September*, 1864.

421. Any claim beyond this will be disallowed even in the High Court, though the plea have not been raised by the defendant.—*Muhammad Dad Khan*, 11*th July*, 1864.

422. The mere fact that no rent has been paid for many years, is no bar to the hearing of a suit when use and occupation are admitted.—*Mussamat Jhuja Kunwar*, 26*th June*, 1862.

423. A suit may be brought within one year of the close of proceedings for *fixing* the rent for arrears due for more than three years, if the collection was suspended until the rent should be fixed.—*Jay Mani Dasi*, 9*th February*, 1865.

424. But a declaratory action, under which a decree for rent might be given, is not such a proceeding as is here contemplated.—*Haru Nath Ray*, 26*th May*, 1865.

XXXIII. Suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent. [*An obsolete paragraph is here omitted.*] Provided that, if the person having the right to sue shall, by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent,—or if any fraudulent account shall have been rendered by the agent,—the suit may be brought within one year from the time when the fraud shall have been

Time for the commencement of suits against agents for money, papers, or accounts.

Proviso.

* See Board's Rule XI, 2.

first known to such person; but no such suit shall, in any case [*an obsolete paragraph is here omitted*] be brought at any time exceeding three years from the termination of the agency.

425. If a principal *suspends* an agent, the agency must be held to have been determined within the meaning of this Section, from the time of the suspension.—*Madan Mohan Ray*, 27*th January*, 1864.

426. In the case of a fraudulent account, limitation runs from the date when the account was rendered.—*A. B. Mackintosh*, 21*st June*, 1865.

427. Fraud must be established on the part of the *agent*, not of another person, for the proviso to come into play.—*Rani Kashiswari Dasi*, 10*th August*, 1863.

428. A right of action revives if the agent renders an account, though more than a year has elapsed since the determination of the agency. An action would lie upon such an account in the Civil Court, unless the account was fraudulent, when a suit might be brought under this section. —*Choudhary Chatra Pal Singh*, 7*th April*, 1863.

429. A suit to recover, from *the surety* of a deceased agent, monies which that agent had embezzled, is not provided for by this Section.— *Bilas Muni*, 8*th April*, 1863.

Mode of instituting Suits. Form of plaint or statement of claim.

XXXIV. Suits under this Act shall be instituted by presenting to the Collector a plaint or statement of claim, which shall contain the name, description, and place of abode of the plaintiff; the name, description, and place of abode of the defendant, so far as they can be ascertained; the substance of the claim; and the date of the cause of action.

430. In a suit for a kabuliyat, the statement of claim must specify boundaries, or in some way identify the land.—*Madan Mohan Banarjya*, 25*th July*, 1864.

Statement by whom to be presented.

XXXV. The statement of claim shall be presented by the plaintiff,—or by an authorized agent* of the plaintiff who has personal knowledge of the facts of the case,—or by an agent who shall be accompanied by a person who has such knowledge.

431. A gomashta can present the statement of claim under this Section.—*Rama Nath Ray Choudhary*, 4*th August*, 1863.

432. As, under Section 69, the gomashta may be plaintiff, the presentation by him is presentation by the plaintiff, and consequently he requires no power of attorney.—*Miyajan Khan Gomashta*, 26*th March*, 1863.

433. The authorized agent *need* not be the plaintiff's general agent; and the Court must hear the agent deputed by the plaintiff, and cannot dismiss the case because the plaintiff does not attend.—*Maharaja Jagadindra Bahadur*, 22*nd July*, 1863.

434. A suit cannot be dismissed *at the hearing*, on the ground of the plaintiff's representative not having a sufficient personal knowledge of the facts of the case. The course provided by Section lxiv should be followed in such circumstances.—*Babu Sekraj Ray*, 19*th April*, 1864.

Verification of statement.

XXXVI. The statement of claim shall be subscribed and verified, at the foot, by the plaintiff or his agent, in the manner following, or to the like effect:—

"I, A. B., do declare that the above statement is true to the best of my knowledge and belief."

Punishment for false verification.

If the statement shall contain any averment which the person making the verification shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.†

435. The principal is not liable to be indicted for perjury for a false statement by his agent.—*Tara Prasad Ray Choudhary*, 12*th August*, 1862.

436. An Appellate Court cannot reject an appeal on the ground of the non-verification of a statement admitted by the first Court.—*Mr. G Clarke*, 17*th September*, 1864.

XXXVII. *(Repealed. See Act X of* 1862.*)*

* See Board's Rule II

† Penal Code, Cap. XI.

XXXVIII. If the plaintiff rely, in support of his claim, on any document in his possession, he shall deliver the same to the Collector at the time of presenting his Statement of Claim. Unless such document be delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not, afterwards, be admitted.

Documentary evidence to be produced by plaintiff.

437. The proper course for a party bringing a suit under Act X, is to file *with his plaint* the original document on which his claim is based, unless he has some excuse. The neglect to do so, however, does not necessitate the dismissal of the suit, if the case can proceed without the production of such document.—*Mussamat Umarath Devya*, 16*th January*, 1861.

438. A plaintiff having relied upon a document which is rejected by the Court, cannot subsequently set up a fresh case.—*Nara Hari Mahant*, 12*th August*, 1862.

439. The discretion of the Lower Court in receiving documents not filed by the plaintiff with his statement of claim cannot be questioned in appeal.—*Jay Chandra Sarmma*, 2*nd March*, 1864. *Sukh Lal Tewary*, 16*th July*, 1864.

440. The documents referred to in this Section are not documents filed only as *collateral* evidence; such should be received at any time.—*Bangsi Lal*, 3*rd December*, 1864.

XXXIX. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver to the Collector a description of the document, in order that the defendant may be required to produce the same.

If the plaintiff require production of document by defendant.

XL. *Repealed. Section xii, Act VI of* 1862 (*B. C.*), *substituted.*

XLI. If the suit be for the ejectment of a ryot, farmer, or tenant, from any land, farm, or tenure; or for the recovery of the occupancy or possession of any land, farm, or tenure; the statement shall describe (as circumstances may require) the extent, situation, and designation of the same; and, if necessary for the identification of the land, shall set forth the boundaries of such land.

Form of plaint in suits for ejectment of ryot, &c., or for recovery of occupancy or possession of land, &c.

XLII. If the statement of claim do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Collector may return the statement to the plaintiff, or, at his discretion, allow it to be amended.

Statement may be returned or allowed to be amended.

XLIII. If the statement of claim be in proper form, the Collector, except as otherwise, hereinafter, specially provided, shall direct the issue of a summons to the defendant, and, if the plaintiff require the personal attendance of the defendant, and satisfy the Collector that such personal attendance is necessary, or the Collector, of his own accord, require such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons, otherwise the summons shall order the defendant to appear, personally, or by an agent,* duly authorized on his behalf, who has personal knowledge of the subject, or who shall be accompanied by a person who has such personal knowledge.

Issue of summons; personal attendance of defendant may be required.

441. The Court exercised a right discretion in refusing to summon a defendant not originally sued, after the case had been heard.—*Pran Mandal Mulla*, 28*th November*, 1864.

XLIV. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be, or be supposed to be, at the time, from the place where the Court is held; and the summons shall order the defendant to produce any document which he may have in his possession, of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence: it shall also enjoin him to bring with him his witnesses, if they are willing to attend without issue of

The day to be specified in the summons, how to be fixed. Defendant to be ordered to produce necessary documents, and to bring witnesses willing to attend without process.

* See Rule II.

process; and shall be in the form (A) contained in the Schedule to this Act, or to the like effect.

Summons how to be served.

XLV. The summons shall be served by delivering a copy of the summons to the defendant personally when practicable; or if the summons cannot be served on the defendant personally, by affixing a copy of it to some conspicuous part of his usual place of abode, and also affixing a copy of the same in the Collector's Office.

Endorsement by Nazir if summons has been personally served or not.

XLVI. If the summons be served personally, the Nazir shall endorse on the summons the fact of such service. If personal service be not effected, the Nazir shall endorse on the summons the reason for not serving it personally, and how it has been served.

Execution of process in another district.

XLVII. If the usual place of abode of the defendant be in another District, the summons, together with the cost of the service thereof, shall be sent, by the public post, to the Collector of such District, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the Officer by whom it was transmitted to him.

Cost of serving summons or warrant to be deposited in Court.

XLVIII. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next succeeding Section, of serving the warrant, shall, in all cases, be deposited in Court upon the day, or the day next following that, on which the plaint or statement of claim is presented to the Collector, If the said amount be not so deposited,—(except in cases in which the Collector may allow the issue of summons free of cost under the discretion reserved to him in Section cxlvi.),—the case shall not be brought on the file of suits. But, in such case, the plaintiff may present another plaint at any time within the period allowed by the rules for the limitation of actions.

Warrant of arrest in what cases to be issued.

XLIX. If, in any suit against an under-tenant or ryot for the recovery of an arrear of rent,—or against an agent for the recovery of any money, papers, or accounts,—the plaintiff desire a warrant of arrest to be issued against the defendant,—such defendant being resident within the district in which the suit is instituted,—he shall present, with his Statement of Claim, an application* for the issue of such warrant. When such application is presented, the Collector shall examine the plaintiff, or his agent, on his oath or affirmation, or otherwise, according to the law for the time being in force in relation to the examination of witnesses,† and inspect the documents adduced by him in support of his claim; and if there be *primâ facie* grounds for believing the claim to be well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Collector may issue a warrant for the arrest of the defendant. The Collector shall fix a reasonable time for the return of the warrant (which shall be in the form (B) contained in the Schedule to this Act to the like effect), and the Officer entrusted with the service of the warrant shall, at the time of arresting the defendant, deliver to him a notice addressed to the defendant, (which shall be in the form (C) in the Schedule or to the like effect), containing the particulars of the claim, and requiring the defendant, if he contest the claim, to bring with him any document upon which he may intend to rely in support of his defence. But no such warrant shall be issued in a suit for arrears of rent due in respect of a dependent taluk or other transferable tenure, which, as hereinafter provided, is liable to sale in execution of any decree which may be passed in the case.‡

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* For proper stamp, see Board's Rule. I.

† Act VIII of 1859, § 149-179; (Appendix B); and Board's Rules, Chapter XII, Section II.

‡ Section CV.

L. If a defendant be arrested under the warrant of arrest, he shall be brought, with all convenient speed, before the Collector, and the Collector shall commit him to custody, unless he deposit in Court such sum as may be specified in the notice.

Procedure after arrest of defendant.

LI. When a defendant is brought before the Collector under warrant, the Collector shall, with all convenient speed, proceed to try the case in the manner hereinafter provided; and, if the suit cannot be at once adjudicated, the Collector may, if he think fit, require the defendant to give security for his appearance, whenever the same may be required, at any time whilst the suit is depending, or until execution of the final decree which may be passed thereon, and may commit the defendant to the Civil Jail, to be there detained until he shall furnish such security, or deposit such sum as the Collector shall order. The security bond* shall be in the form (D) contained in the Schedule to this Act, or to the like effect.

Procedure when defendant is brought before the Collector under warrant.

Form of security bond.

LII. If the defendant cannot be arrested under the warrant, the Collector, on the application† of the plaintiff, shall either postpone the case, for such period as he may think proper, in order that the plaintiff may apply, within the said period, for another warrant to be issued for the arrest of the defendant, or shall, forthwith, issue a proclamation‡—to be affixed in his own office and at the residence of the defendant,—fixing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice at the residence of the defendant. If the defendant shall appear, in pursuance of the proclamation, he shall be dealt with as provided in the last preceding Section.

Procedure if warrant of arrest cannot be served upon the defendant.

LIII. If it shall appear to the Collector that the arrest of the defendant was applied for without reasonable cause, the Collector may, in the decree, award to the defendant such sum, not exceeding one hundred Rupees, as he may deem a reasonable compensation for any injury or loss which the defendant may have sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensation for arrest applied for without reasonable cause.

LIV. If, on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned, prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case shall be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules for the limitation of actions.

Consequence of neither party appearing on the day of trial.

LV. If, on any such day, the defendant appear, the Collector shall pass judgment against the plaintiff by default,§ unless the defendant admit the cause of action, in which case the Collector shall proceed to give judgment for the plaintiff, upon such admission, without costs; provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

If defendant only appear to dispute the demand, Collector shall pass judgment by default; but if defendant admit the claim, Collector shall decree upon such admission.

Proviso.

LVI. If, on any such day, the plaintiff only appear, the Collector, upon proof that the summons or proclamation has been duly served, according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff, and any documentary or oral evidence adduced by him,

If plaintiff only appear, Collector may proceed *ex-parte*.

* See Board's Rule XI, 7.
† For proper Stamp, see Board's Rule I.
‡ See form H., appended to the Board's Rules.
§ See Board's Rule XI.

may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex-parte* against the defendant.

442. The presentation of a petition for an adjournment by a mukhtar, is no "appearance" such as will bar an *ex-parte* judgment.—*Bowers*, 24*th June*, 1863.

If defendant appear on a day to which the case is postponed, Collector may allow him to be heard in answer to the suit.

LVII. If the defendant appear on any subsequent day to which the hearing of the suit may be postponed under the last preceding Section, the Collector may, upon such conditions, if any, as to costs or otherwise, as he may think proper, allow the defendant to be heard, in answer to the suit, as if he had appeared on the day fixed for his attendance.

Revival, reversal, and alteration of decrees *ex-parte* or by default.

LVIII. No appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But, in all such cases, if the party against whom judgment has been given, shall appear, either in person or by agent, (if the plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period,) and shall show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise, as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

443. A Collector may revive a suit decreed *ex-parte* by a Deputy Collector.—*Jotendra Mohan Thakur*, 3*rd May*, 1864.

444. The order of a Deputy Collector admitting revival under this Section, is final under Section XIII., Act VI, 1862, B. C. The Collector cannot hear an appeal from such an order.—*Kishta Nath Biswas*, 22*nd February*, 1864.

445. The revival affects the rights of the applicant *only*, and not those of other defendants.—*Jotendra Mohan Thakur*, 3*rd May*, 1864.—*Durga Prasad Ghose*, 26*th November*, 1864.

446. A defendant may apply for a revival of suit under this Section WITHIN FIFTEEN DAYS AFTER SUCH STEPS AS MUST, NECESSARILY, BRING THE DECREE TO HIS NOTICE: *e. g.*, seizure of person or property.—*Baidya Nauth Ray*, 12*th January*, 1865.

On appearance of parties, the parties to be examined by the Collector, and may cross-examine each other.

LIX. When both parties appear, in person or by agent,* on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Collector, the Collector shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other. If either of the parties be not bound to attend personally, any agent by whom he shall appear, or any person who shall accompany such agent, shall be examined and cross-examined in like manner as the party himself would have been if he had attended personally. At the time of examination, the defendant, if he think fit, may file a written statement † of his defence.

447. A petition to correct the deposition of an agent should be received with the greatest caution, if at all—*Ram Narayan Singh*, 24*th June*, 1864.

448. The written statement of a defendant need not be verified.—*Mr. G. Clarke*, 17*th September*, 1864.

Examination of parties, &c.

LX. The examination of the parties or their agents, or such other persons as aforesaid, shall be upon oath or affirmation, or otherwise, according to the law for the time being in force, relative to the examination of witnesses.‡ The substance of the examination

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* See Rule II.

† For proper Stamp, see Board's Rule I.

‡ Act VIII of 1859, § 149-179. (Appendix B.): and Board's Rules. Chapter XII, Section II.

shall be reduced to writing, in the vernacular language of the Collector, and filed with the record.

Witnesses to be examined.

LXI. If either of the parties shall bring forward a witness on such day, the Collector may take the evidence of such witness.

Documentary evidence to be produced by defendant.

LXII. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit; and unless such document be so delivered in, or its non-production be sufficiently excused, or unless the Collector see fit to extend the time for producing the same, it shall not afterwards be admitted.

After examination, Collector may make his decree if no further evidence is required.

LXIII. If, after the examination required by Section lix, and, also, the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree * can be properly made without further evidence, the Collector shall make his decree accordingly.

Consequence of inability of agent to answer.

LXIV. If, on such examination as aforesaid, the agent of either party be unable to answer any material question relating to the case, which the Collector is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Collector may postpone the hearing of the case to a future day, and direct that the party whose agent may have been unable to answer as aforesaid, shall attend in person on such day; and, if the party so directed to attend shall fail to appear in person on the day appointed, the Collector may pass judgment as in case of default,† or make such other order as he may deem proper in the circumstance of the case.

449. A case cannot be *dismissed*, at this stage, for want of personal knowledge in the agent.—*Sekraj Ray*, 19*th April*, 1864.

If necessary, Collector to record issue and to fix a day for hearing further evidence.

LXV. If, on such examination as aforesaid, it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Collector shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Collector.

450. Instance of defective procedure in fixing issues and examining witnesses.—*Riaz-un-nissa Bibi*, 7*th July*, 1865.

451. Procedure for fixing issues, and in regard to the attestation of receipts.—*Rajeshwari Devya*, 11*th December*, 1865.

Parties shall produce their witnesses on the day of trial; or Collector, on application of either party, shall issue summons for the attendance of a witness.

LXVI. The parties shall bring forward their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply‡ to the Collector in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Collector shall issue a summons§ requiring such witness to attend.

452. It is the duty of the party to take measures to secure the attendance of his witnesses in due time before the day of hearing.—*Tilok Chand Saha*, 17*th February*, 1861.

453. No reasonable application to compel the attendance of important witnesses should be rejected without sufficient cause.—*Anand Lal Ray Choudhary*, 1*st August*, 1865.

454. A Court must record reasons for declining to summon witnesses.—*Wazir Muhammad*, 8*th January*, 1866.

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* Board's Rule III.

† See Section LV.

‡ On plain paper: see Schedule B, Act X of 1862: Article 10, General Exemption.

§ See Form I., appended to the Board's Rules.

LXVII. The provisions of the Regulations and Acts, and all other rules, for the time being in force, relating to the evidence of witnesses;* for procuring the attendance of witnesses and the production of documents; and for the examination, remuneration, and punishment of witnesses, whether parties to the case or not, in cases before the Civil Courts of the Presidency of Bengal, shall, except in so far as the same may be inconsistent with the provisions of this Act, apply to, and be of equal force and effect in, suits under this Act.

Rules regarding attendance, examination, &c., of witnesses.

455. A tenant is entitled to summon his landlord as a witness.—*Supal Khan, 21st December*, 1865.

456. If the case of a party is not closed, he may summon witnesses, even though he have previously declared that he would rest his case upon the opposite party's deposition.—*Bangsi Lal, 3rd December*, 1864.

457. The proceedings of the Collector were held to be irregular because he discharged the defendant's witnesses without taking their depositions, after having kept them in attendance nearly a month, and because he, afterwards, verbally, ordered the defendants to procure their witnesses within 3 days, and, on their failure to appear, decided the case in their absence.—*Shekh Kamyab, 21th June*, 1864.

458. The Court being satisfied that the non-appearance of the defendant's witnesses, who were plaintiff's servants, was of purpose, properly dismissed the suit.—*J. G. Bagram, 1st July*, 1864.

459. All the witnesses in a case should be examined, as far as possible, consecutively.—*Ganga Govind Ray, 5th September*, 1865.

460. When a suit is remanded for the production of particular evidence, parties should not be allowed to bring forward other fresh evidence.—*Bolaki Lal, 22nd December*, 1864.

461. When a plaintiff cited as a witness, refuses to attend, the law does not, peremptorily, enjoin upon the Court to dismiss the case for default, but, also, vests it with the power of passing such other order as may seem meet to it from the evidence on the record.—*Aziz-un-nissa Bibi, 15th April*, 1863.

462. A plaintiff or defendant in a rent suit cannot, with reference to the bearing on this Section, of Section 42, Act VIII of 1859, be summoned personally, who, at the time, is *bonâ fide* residing at a distance of more than fifty miles from the place where the Court is held, unless he be resident within the limits of the jurisdiction of the Court.—*Shekh Ghulám Ahya, 15th August*, 1865.

LXVIII. If, on the day fixed for the trial of any issue, neither of the parties appear, the case shall be struck off under the conditions provided in Section liv. If, on any such day, one only of the parties appear, the issue may be tried and determined, in the absence of the other party, upon such proof as may be, then, before the Court.

Consequence of parties not appearing on the day fixed for the trial of any issue.

LXIX. When suits under this Act are instituted or defended by naibs,† gomashtas, or other persons employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act by which the personal appearance or attendance of parties to a suit is, or may be, required, shall be applicable to such naibs, gomashtas, or other persons; and anything which, by this Act, is required, or permitted, to be done by a party in person, may be done by any such person as aforesaid. Processes served on any such person shall be as effectual, for all purposes in relation to the suit, as if the same had been served on the landholder in person, and all the provisions of this Act, relative to the service of processes on a party to the suit, shall be applicable to the service of processes on such person.

Suits instituted or defended by naibs, or gomashtas, &c.

463. Under this Section the gomashta may be plaintiff; the presentation by him is presentation by the plaintiff, and, consequently, he requires no power of attorney.—*Miyajan Khan, 26th March*, 1863.

LXX. A plaintiff or defendant shall not be required to attend in person, if of the female sex, and of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Personal attendance of plaintiff or defendant not required in certain cases.

* See Act VIII. of 1859, Sections 149 to 179, and also Board's Rules, Chapter XII, Section II.

† Board's Rule II.

LXXI. Any party to a suit may employ an authorised agent,* or mukhtar, to conduct the case on his behalf; but the appointment of such agent, or mukhtar, shall not excuse the personal attendance of the plaintiff, or defendant, in cases where his personal attendance is required by the summons or any order of the Court.—*Remainder repealed. Act XX. of* 1865 *substituted.*

Employment of authorized agents or mukhtars.

LXXII. The Collector may, in any case, grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also, from time to time, in order to the production of further proof, or for other sufficient reason to be recorded† by the Collector, adjourn the hearing, or further hearing, of any case in such manner as to him may seem fit.

Collector may grant time or adjourn hearing.

464. In a case involving title, and where an absentee landlord was defendant, it was held that the Collector ought to have allowed him time, beyond the ordinary period, to file his defence.—*Maharaja Narendra Narayan Bhup, 31st July*, 1861.

465. It is optional with the Collector to give time to a party under this Section or not.—*Ishanchandra Ray, 26th June*, 1862.

LXXIII. The Collector may, at any stage of a case, cause a local enquiry‡ and report, respecting the matter in dispute, to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may, himself, proceed to the spot and make such local enquiry in person. The provisions of the law for the time being in force, relative to local enquiries by Amíns or Commissioners under orders of the Civil Court,§ shall apply to any local enquiry made by any officer under this Section, and, so far as they are applicable, to enquiries made by the Collector in person. In the latter case, the Collector, after completing the enquiry, shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.

Collector may cause local enquiry to be made.

466 If a party neglect to avail himself of the opportunity of examining the Commissioner in open Court, he should not be allowed, afterwards, to raise objections to his proceedings.—*Bakshi Ali, 2nd December*, 1861.

467. The value of a Commissioner's report depends upon the evidence on which it is based.—*Raja Sundari Devya, 8th December*, 1861.

LXXIV. *(Repealed. Sections vii. and viii., Act VI. of* 1862, *B. C., substituted.)*

LXXV. No interest shall be allowed to a plaintiff on any sum paid by the defendant into Court, from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

No interest on deposits.

LXXVI. If, on the trial of a suit for the delivery of a pottah instituted by a ryot having a right of occupancy, the parties do not agree as to the term for which the pottah is to be granted, the Collector shall fix such term as, under the circumstances of the case, he may think just and proper. Provided that the term shall not, in any case, be longer than ten years, and, in estates not permanently settled, shall not extend beyond the period for which the proprietor of the estate has engaged with Government. Provided also that, if the defendant be a farmer, or other person having only a temporary interest in the land, the term of the pottah shall not extend beyond the period of the continuance of such interest. For cultivators not having a right of occupancy, the term of pottah shall be, exclusively, in the discretion of the person entitled to the rent of the land.

If on trial of suit for delivery of pottah, parties do not agree as to the time for which the pottah is granted, Collector to fix the time.

Proviso.

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* Board's Rule II.

† Board's Rules, Chapter XII, II, 12.

‡ Board's Rule IV.

§ See Act VIII. of 1859, Section 180.

LXXVII. When, in any suit between a landholder and a ryot or under-tenant under this Act, *the right to receive the rent* of the land or tenure cultivated or held by the ryot or under-tenant is disputed, and such right is claimed* by, or on behalf of, a third person, *on the ground that such third person* or a person through whom he claims, *has, actually, and in good faith, received and enjoyed such rent before, and up to the time of, the commencement of the suit*, such third person shall be made a party to the suit, and the question *of the actual receipt and enjoyment of the rent by such third person* shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always, that the decision of the Collector shall not affect the right of either party, who may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

If in actions for rent a third person appears as claimant, he is to be made a party to the suit.

Proviso.

468. If such an intervenor as is described, appear, for the first time, before the Judge, he should remand the case to be tried *de novo* under this Section.—*Tara Chand Potdar, 5th September*, 1861.

469. In accordance with the principle of this Section, rent cannot be recovered upon a kabulyat *disallowed, antecedently, at the suit of a third party.*—*Anand Mohan Ghose, 27th March*, 1862.

470. If, by a final decree of the Civil Court, the right to receive rents has been decided against the plaintiff, the Collector cannot give him a decree, notwithstanding that he may have been collecting the rents. But if the effect of the decree of the Civil Courts be a matter of proof, the Collector should enquire, as directed by this Section, into the fact of previous enjoyment of rents.—*Syad Ahmad kaza, 5th August*, 1863.—*Ramjivan Choudhary, 21st November*, 1865.

471. A decree-holder who has executed his decree, must be considered to be in possession. But a partition award is no absolute proof of title, and no estoppel in the way of an intervenor who can prove that he has received and enjoyed the rents claimed from a date subsequent to the partition.—*Sri Nath Ghosal, 17th May*, 1865.

472. Specimen of a case in which a decree for possession was held not to prove possession.—*Maharani Shiveshwari Dasi, 4th August*, 1865.

473. A proprietor who has sold his estate and inducted his vendee cannot, under color of this Section, demand rent which a ryot has paid to the vendee.—*J Smith, 2nd December*, 1861.

474. This Section applies only to the case of a person (intervening as a defendant) who claims a *present* right, which is supported by a proof of *actual prior receipt and enjoyment* of the rent, up to the time of the suit, either by himself or by the person through whom he claims. There is nothing in the Act to authorize a decree in favour of a plaintiff who proves merely a previous receipt of rent, *if that proof is met and answered* by proof that his right has ceased.—*Sayyámani Devyá, 16th December*, 1864.

475. A zemindar installed by the Collector under Section XXV., must be held, for the purposes of this Section, to be in actual possession and enjoyment of the estate.—*Mahesh Chandra Pal Choudhary, 14th June*, 1862.

476. If a party against whom a decree of the Civil Court has been given, be not ousted from possession in execution of such decree, he is entitled to collect rents, subject to account to the decree-holder for the same.—*Panchanan Banarjya, 27th March*, 1862.

477. If the plaintiff's claim is found to be without foundation, it is unnecessary to try the case as between him and the third person.—*Aziz Ahmad Ghazi, 21th April*, 1862.

478. But if the real dispute is between the plaintiff and the third person, it must be enquired into, in the manner prescribed in this Section, before the case can be either decreed or dismissed. *Kundra Pradhan, 11th June*, 1862.—*Mirza Zahid Ali, 5th April*, 1162.—*Rani Khyameshwari Devya, 8th July*, 1864.

479. In a case involving a question of right and title, the plaintiff is entitled to have his evidence heard and considered by the Court of first instance, before he is referred to the Civil Court.—*Shekh Mubarak Husain, 12th June*, 1862.

480. In a suit for arrears of rent not exceeding 100 Rupees in amount, to which a third person, who claims a right to receive the rents, is made a party under this Section, no question of right or title is necessarily involved, such as to justify an appeal to the Judge from the decision of a Collector.—*Syad Hamid-ud-din, 26th May*, 1865. (FULL BENCH.)

481. But if the Collector erroneously tries titles, the appeal should be admitted by the Judge, and the case tried by him, if the evidence is complete, upon the proper issue, under Section 353, Act VIII of 1859.—*Bibi Jamiran, 12th June*, 1865.

482. This Section applies only to cases where two parties claim rent from the *same* ryot, and not to a case where the intervenor claims rent for the same land, but from a ryot other than the

* For proper Stamp, see Board's Rule 1.

ryot sued by the plaintiff *Pran Nath Ray Choudhary, 5th December*, 1861.—*Sayad Mansur Ali Khan, 12th December*, 1864

483. A Collector is not competent, under this Section, to pass a judgment which determines a question of right to rent upon the ground of legal title to the land. The only point he can decide is whether the third party in the suit has hitherto received the rents in good faith: no question of *title* to the land can be adjudicated upon.—*Messrs. Watson & Co., 6th March*, 1862.

484. A boundary dispute cannot be decided under this Section, the issue must be confined to the point laid down in the law.—*Chatouri Misr, 8th May*, 1862.

485. No question of right between the zemindar and one or more lessees can be gone into.—*Syama Charan Haldar, 13th May*, 1862.

486. If the third person claim only part of the rent paid for, the whole suit cannot, on that account, be dismissed.—*Shiv Prasad Choudhary 2nd September*, 1863.

487. The receipt of rent as an *agent* does not give a title, under this Section, to the continued receipt of such rent, after the agency is determined.—*Gopal Chandra Ray, 1st June*, 1864.

488. The allegation of an intervenor, under this Section, that the plaintiff has hitherto received rent only as the intervenor's agent, must be enquired into.—*Kadambari Devya, 4th August*, 1864.

489. The onus of proving the receipt of the rent is upon the intervenor.—*Kishn Chandra Das, 27th January*, 1865.

490. If it be found that an intervenor under this Section is entitled to the rent, the suit should be dismissed though the intervenor admits that he is liable to the plaintiff for the rent.—*Kali Chandra De, 27th January*, 1863.

491. The limitation is from date of decision in appeal—*Dinanath Bose, 5th February*, 1866. (FULL BENCH) After that date, claim to the rent in suit is barred. But a suit for the property itself is not barred —*Mussamat Janoki, 13th September*, 1865.

492. An dismissal for default is no decision for the purpose of this limitation.—*Shekh Mousam Ali, 15th December*, 1865.

LXXVIII Any person desiring to eject a ryot or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of suits for the ejectment of a ryot, or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed.

Suits for ejectment or cancelment of lease.

493. Those parties only can be ejected under this Section who come within the purview of Sections XXI and XXII. Persons *with a permanent* or *transferable interest* do not come under those Sections, and consequently this Section does not apply to them. A decree-holder must realize his dues from such persons, by the mode enjoined in Section CV. of the Act, *viz*, by the sale of the tenure, and, if that does not suffice, by the sale of any other property, moveable or immoveable, belonging to the debtor.—*Nand Lal Ghose, 31st December*, 1860—*Ram Kishn Das, 26th March*, 1862.

494. If, however, the pottah contain a condition of ejectment, it may be enforced, even though the tenure be saleable.—*Jay Durga Devya, 13th April*, 1863.

495. The zemindars having, by their acts, admitted the tenure to be transferable and mukarari, it is not for the Court to declare that the tenure is neither transferable nor mukarari in a suit for rent. The proper tribunal to settle these questions is the Civil Court, and not the Revenue Court, under this law —*Babu Dhanpat Singh, 5th May*, 1864.

496. In a suit under this Section, the appeal lies to the Judge, not to the Collector, although the amount of the arrear be less than 100 Rupees.—*Kala Chand Chakravartti, 26th June*, 1862.

497. A suit for arrears of house-rent and for ejectment of the tenant from the house, is not a suit cognizable by the Revenue Authorities under this Section, which makes no mention of the rent of houses.—*Nawab Haji Muhammad Khan Kazalbash, 28th June*, 1862.

498. A landlord cannot re-enter for default of the payment of rent of one year, if he have received the rent on account of a subsequent year —*Shekh Pir Bahsh, 28th July*, 1862.

499. This Section does not give a landlord the right to eject a tenant for non-payment of arrears of rent due in the middle of a year.—*Mr. R. Savi, Junior, 13th March*, 1863.

500. A party not sued as a defendant cannot be evicted by a decree passed under this Section, and is not, therefore, allowed to intervene.—*Shekh Salim, 20th March*, 1863.

501. If the decree, by an oversight, does not direct ejectment it, cannot be enforced.—*Mr. R. Savi, 13th March*, 1864.

LXXIX. *Repealed. Section xv., Act VI, 1862, (B. C.,) substituted.*

LXXX. When a decree is given for the delivery of a *pottah*, if the person required by the decree to grant such pottah, refuse or delay to grant the same, the Collector may grant a pottah in conformity with the terms of the decree, under his own hand and seal; and such pottah shall be of the same force and effect, as if granted by the person aforesaid.

If a person required by the decree refuse to grant pottah, Collector may do so.

LXXXI. When a decree is given for the delivery of a *kabulyat*, if the person required, by the decree, to execute such kabulyat shall refuse to execute the same, the decree shall be evidence of the amount of rent claimable from such person; and a copy of the decree, under the hand and seal of the Collector, shall be of the same force and effect as a kabulyat executed by the said person.

Refusal of person to execute kabulyat as required by the decree.

LXXXII. If the decree be for the *ejectment of any ryot* from land occupied by him, or for the *reinstatement of any ryot* in the occupancy of land from which he has been ejected, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree to such possession or occupancy. If any opposition is made to the execution of the order for giving such possession or occupancy by the party against whom the the order is made, the Magistrate, on the application of the Collector, shall give effect to the same.

Mode of executing decree for ejectment or reinstatement of ryot.

Punishment for obstructing execution

502 A person not a party to the original proceedings cannot be ejected in execution of the decree—*Shekh Salim, 20th March*, 1863.

LXXXIII. If the decree be for the *cancelment of any lease*, or the *ejectment* of *any farmer*, or other person, (not being an actual cultivator), or for the *reinstatement* of any *farmer*, or other such person, in the possession of a farm or tenure from which he has been ejected, the decree shall be executed by proclaiming the substance of the decree to the cultivators or other occupants by beat of drum, or in such other manner as may be customary, and affixing the same in some conspicuous place within or adjacent to the farm or tenure.

Mode of executing decree for cancelment of a lease, or for ejectment or reinstatement of a farmer or tenant.

LXXXIV. If the decree be for *arrears of rent*, or *for money, papers*, or *accounts*, and the defendant have been committed to jail, or appear pursuant to the conditions of any security bond given under Section li, the Collector may order that he be detained in, or committed to, the civil jail, unless he, immediately, pay into Court the amount of the decree with costs, or otherwise comply with the terms of the decree.*

In what case a judgment-debtor may be detained or imprisoned without issue of process of execution.

LXXXV. If the judgment-debtor have given *security* for his appearance, and be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety. If the decree be for the delivery of papers or accounts, and the defendant be not present when judgment is pronounced, and the surety shall fail to deliver him into custody when required so to do, execution may be taken out against the surety, for the sum due under the bond, in the same manner as if a decree for that sum had been passed against the surety.

Liability of surety on failure to deliver judgment-debtor into custody.

LXXXVI. *Repealed. Section xvii., Act VI, 1862, (B. C.) substituted.*

LXXXVII. Any *moveable property* required to be seized under an execution shall, if practicable, be described in a list† to be furnished by the judgment-creditor; but if the creditor is unable to furnish such list, he may apply for a general attachment of

Application for execution against moveable property.

* Board's Rule III. 8.

† For proper Stamp, see Board's Rule I.

the debtor's effects to the amount of the judgment and costs. In either case, the property to be seized shall be pointed out to the officer entrusted with the execution of the process by the creditor or his agent.

How long warrant shall continue in force.

LXXXVIII. Every warrant of execution shall bear date on the day on which it is signed by the Collector, and shall continue in force for such period as the Collector may direct, not being more than sixty days calculated from such date.

Second and successive warrants.

LXXXIX. Second and successive warrants of execution may be issued by order of the Collector, on the application* of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

After one year execution not to issue without notice.

XC. Process of execution shall not be issued upon any judgment without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year shall have elapsed from the date of the judgment, or from the date of the last previous application for execution.

Execution not to issue against heir or representative of a deceased party without notice.

XCI. Execution on a judgment shall not issue against the heir or other representative of a deceased party without notice to such heir, or other representative, to appear and be heard.

No process of execution to be issued three years after date of judgment.

XCII. No process of execution, of any description whatsoever, shall be issued on a judgment under this Act, after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred Rupees, in which case the period, within which execution may be had, shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of Civil Courts.†

503. A notice is not a proceeding to keep alive a decree.—*Grijanand Upadhyay*, 25*th January*, 1866.

501. No suit can be maintained in a Civil Court to enforce a decree of a Revenue Court, which the Revenue Court has refused to execute, upon the ground that it has been satisfied.—*Anand Mayi Dasi*, 3*rd June*, 1863.—Full Bench.

Warrant against the person.

XCIII. If a warrant issue for taking in execution *the body of any person*, the officer charged with execution of the warrant shall bring him, with all convenient speed, before the Collector. If such person shall not, then, deposit in Court the full amount specified in the warrant, or make such arrangement for the payment of the same as shall be satisfactory to the judgment-creditor; or satisfy the Collector that he has no present means of paying the debt; the Collector shall send him to the civil jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall, in the meantime, pay the full amount for the payment of which he is liable under the decree.

Limit of imprisonment.

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three calendar months, when the amount decreed, exclusive of costs, does not exceed fifty Rupees,—or six calendar months, when such amount does not exceed five hundred Rupees,—or two years in any other case.

If arrest be for non-delivery of accounts.

If the decree against any person arrested under a warrant, be for the delivery of papers or accounts, and the papers or accounts shall not be delivered by him when he is brought before the Collector, such person may be committed to the civil jail, there to remain for such time, not exceeding six calendar months, as the Collector shall direct, unless he shall, in the meantime, deliver the papers or accounts according to the terms of the decree.

No person to be imprisoned a second time under same judgment

XCIV. Any person once discharged from jail shall not be imprisoned a second time under the same judgment. If the amount due under the decree do not exceed one hundred Rupees, the Collector may declare such discharged person absolved from further

* For proper Stamp, see Board's Rule I.

† See Act XIV., 1859, Section xx.

liability under that decree. In other cases, the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to such person from attachment in execution of the same.

Diet-money to be deposited at the time of issue of warrant.

XCV. Any person applying for a warrant of arrest under Section xlix., or suing out process of execution against the body of any person, shall deposit in Court, at the time of issue of the warrant, diet-money, for one month of thirty days, at such rate as the Collector may direct, not exceeding two annas per diem, unless the Collector, for any special reason, direct that deposit be made at a higher rate, which shall not exceed four annas per diem.

Payment of diet-money in advance during imprisonment.

XCVI. Payment of diet-money, at the same rate, shall be made previously to the commencement of each succeeding month of the imprisonment; in failure of which, the party confined shall be discharged.

Diet-money to be costs in suit.

XCVII. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in suit, and any diet-money not so spent, shall be returned to the person who deposited the same.

List of property to be prepared and proclamation of sale to be published, &c.

XCVIII. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer* charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale, and at the residence of the debtor. A copy of the said proclamation and list shall be transmitted to the Collector and shall be affixed in his Office.

Custody and sale of moveable property taken in execution.

XCIX. No sale of any moveable property taken in execution shall be made until after the end of ten days next following the day on which such property may have been so taken. Until such sale, the property shall be deposited in some fit place; or it may remain in custody of some fit person approved by the officer executing the writ. The provisions of Sections cxxix. to cxxxiii., so far as the same are applicable, shall be applied to sales under this Section.

Collector may stay sale of moveable property seized, if a third party claim any interest therein.

C. If, before the day fixed for the sale, a third party appear before the Collector and claim† a right or interest in any of the moveable property taken in execution, the Collector shall examine such party, or his agent, on oath or affirmation, or otherwise, according to the law for the time being in force relative to the examination of witnesses‡ and, if he see sufficient reason for so doing, may stay the sale of such property.

Collector to adjudicate such claims.

CI. The Collector shall adjudicate upon such claim, and make such order between the claimant and the plaintiff and defendant in the original suit, as shall seem fit. In trying such claim, the Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Claimant failing to establish his right, liable to pay compensation to judgment-creditor.

CII. If the claimant shall fail to establish his right to the property taken in execution, the Collector, at the time of disposing of the case, may award to the judgment-creditor, against such claimant, as part of the costs, such sum as he may consider sufficient to cover any loss of interest, or damage, which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

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* Board's Rule V 2.

† For proper Stamp, see Board's Rule I.

‡ See Act VIII. of 1859, Secs. 149 to 160 (Appendix B.)

CIII. No appeal shall lie from any order passed by the Collector under the two last preceding Sections. But the party against whom the same may be given, shall be at liberty to bring a suit in the Civil Court to establish his right, at any time within one year from the date of the order; provided that, if the order be for the sale of the property, the suit shall not be for the recovery of the property, but shall be for damages against the judgment-creditor by whom the property was brought to sale.

No appeal from order of Collector under the two last preceding Sections.

Proviso.

CIV. No irregularity in publishing or conducting a sale of moveable property under an execution shall vitiate such sale; but this rule shall not be held to deprive any person who may sustain damage by reason of such irregularity, from recovering such damage by action in the Civil Court; provided such action be brought within one year from the date of sale.

Sale not vitiated by irregularity in publishing or conducting the same.

Proviso.

CV. If the decree be for an arrear of rent due in respect of an under-tenure which, by the title deeds, or the custom of the country, is transferable by sale, the judgment-creditor may make application* for the sale of the tenure, and the tenure may, thereupon, be brought to sale in execution of the decree, according to the rules for the sale of under-tenures for the recovery of arrears of rent due in respect thereof, contained in any law for the time being in force.† But no such application shall be received, when a warrant of execution has been previously issued against the person or moveable property of the judgment-debtor, so long as such warrant remains in force. If, after sale of an under-tenure, any portion of the amount decreed remains due, process may be applied for against any other property, moveable or immoveable, belonging to the debtor, and any such immoveable property may be brought to sale in the manner provided in Section CX. of this Act.

Sale of transferable tenures in execution of decrees for arrears of rent.

505. So long as *any rent* remains in arrear from a saleable under-tenure, the lien of the landlord upon the tenure under this Section, has priority over all other titles.—*Durga Prasad Bose*, 14*th April*, 1864.—*T. J. Kenny*, 30*th July*, 1864.

506. But he may part with this lien by recognizing a transferee.—*Amrit Lal Bose*, 24*th March*, 1865.

507. The zemindar's right to sell, under this Section, takes precedence of all prior liens upon the tenure; but he must sell the tenure, not "the rights and interests" of the tenant.—*Maharaja Satish Chandra Ray*, 24*th June*, 1864.—*Ramjivan Choudhary*, 21*st November*, 1865.

508. Other immoveable property can only be sold after the under-tenure has been sold, without fully satisfying the decree. If such property be sold otherwise, a suit lies to the Civil Court in remedy.—*Janoki Lal*, 31*st August*, 1865.

509. The purchaser of a tenure at a sale under Act VIII of 1835, acquired it, as originally created, free of all incumbrances.—*Cohn, Feilmann & Co*, 14*th June*, 1862.—*Dwarika Nath Das*, 16*th August*, 1865.

CVI. If, before the day fixed for the sale of any such under-tenure as aforesaid, in execution of a decree for arrears of rent due in respect of such under-tenure, a third party appear before the Collector, and allege* that such third party, and not the person against whom the decree has been obtained, is the proprietor of such under-tenure, and was in lawful possession of the same at the time when such decree was obtained, the Collector shall examine such party, in the manner provided in Section c. for the examination of third parties, and, if he see sufficient reason for so doing, and such party shall deposit in Court the amount of the decree, or give sufficient security for the same, the Collector shall stay the sale, and proceed to enquire into, and adjudicate upon, the claim. Provided that no transfer of an under-tenure which, by the provisions of this Act, or any other law for the time being in force, is required to be registered in the serishta of the zemindar or superior tenant, shall be recognized, unless it have been

If third party claim to be the lawful possessor of such under-tenure, Collector to stay the sale and enquire into, and adjudicate upon, the claim.

Proviso.

* For proper Stamp, see Board's Rule I.

† Act VIII of 1865, B C. See Appendix C.

so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector.

510. Mere cognizance by the zemindar of the fact of a party having purchased a tenure, is not sufficient to cure the defect of non-registration. It must be proved that the zemindar has not only known of the transfer, but has also accepted the transferee as his tenant; the receipt of rent by the zemindar from the transferee being one of the best proofs of the fact of the zemindar having accepted him as his tenant.—*J. C. Sarkies, 1st July*, 1864.

511. If a zemindar has recognized a transfer by receiving rent from the transferee for a lengthened period, he cannot, although the transfer may not have been registered in his office, hold the original owner responsible, and ignore the rights of the transferee.—*Nava Kumar Ghose, 15th July*, 1864.

Mode of adjudicating such claims.

CVII. In trying such claim, the Collector shall be guided by the rules contained in this Act, so far as the same may be applicable; and the judgment passed by the Collector, on such claim, shall not be subject to appeal; but the party against whom it is given may bring a suit in the Civil Court to establish his right, at any time within one year from the date of the judgment.

Execution of decrees given in favour of sharers in undivided estates or tenures.

CVIII. If a decree is given in favor of a *sharer* in a joint undivided estate, dependent taluk, or other similar tenure, for money due to him on account of his share of the rent of an under-tenure situated in such undivided estate, taluk, or tenure, application for the sale of such under-tenure shall not be received unless execution shall have been first taken out against any moveable property which the judgment-debtor may possess within the District in which the suit was instituted, and the sale of such property, if any, shall have proved insufficient to satisfy the judgment. In such case, such under-tenure, if of the nature described in Section cv, may be brought to sale in execution of the decree, in the same manner as any other immoveable property may be sold in execution of a decree for money, under the provisions of the two next following Sections.

In all cases of decrees for money, if judgment cannot be satisfied by sale of debtor's moveable property, execution may be had against his immoveable property.

CIX. In the execution of any decree for the payment of money under this Act, not being money due as arrears of rent of a saleable under-tenure, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor within the District in which the suit was instituted, the judgment-creditor may apply* for execution against any immoveable property belonging to such debtor.

Mode of executing process if immoveable property be a house or other building.

If it be a saleable under-tenure.

If it be an estate or a share of an estate.

CX. If the immoveable property against which execution is applied for, be a *house* or other *building*, process shall be issued in the same manner as for the attachment and sale of moveable property, and the provisions of Sections xcviii and xcix† shall be applicable to the execution of such process. If the property be a *saleable under-tenure*, it shall be sold under the provisions of the law, for the time being in force, applicable to the sale of such under-tenures for demands other than those of arrears of rent due in respect thereof.‡ If the property be *an estate or a share of an estate*, it shall be sold under the rules in force for the sale of estates for the recovery of demands recoverable by the same process as arrears of land revenue.§

512. A Collector has power to give possession to a purchaser in a sale held under this Section.—*R. Solano, 19th April*, 1864.

Consequence of objection being offered before the sale of an immoveable property.

CXI. If, before the day fixed for the sale of any immoveable property as aforesaid, objection shall be offered to the sale, on the ground of such property not belonging to the judgment-debtor, and, consequently, not being liable to be sold in execution of a decree against him, the Collector shall examine the party making the objection, in the manner prescribed in Section c for the examination

* For proper Stamp, see Board's Rule I. † See Board's Rule V.
‡ Act VIII. of 1859, § 148, (Appendix B.) and Board's Rule XVI.
§ Act XI. of 1859, § v.

of third parties, and, if satisfied that there is sufficient ground for so doing, shall stay the sale and proceed to enquire into and adjudicate upon the objection in the same manner, and subject to the same right of suit by the party against whom judgment may be given, as is provided in Section cvii.

Produce of the land to be held hypothecated for the rent.

CXII. The produce of the land is held to be hypothecated for the rent payable in respect thereof; and when an arrear of rent, as defined in Section xx. of this Act, is due from any cultivator of land, the zemindar, lakhirajdar, farmer, dependent talukdar, under-farmer, or other person *entitled to receive rent immediately* from such cultivator, instead of bringing suit for the arrear as hereinbefore provided, may recover the same by DISTRAINT and sale of the produce of the land on account of which the arrear is due, under the following rules. Provided always that, when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given, shall not be liable to distraint. Provided also that no *sharer* in a joint estate, dependent taluk, or other tenure in which a division of lands has not been made amongst the sharers, shall exercise the power of distraint otherwise than through a manager authorized to collect the rents of the whole estate, taluk, or tenure, on behalf of all the sharers in the same. Provided, further, that, in Patidari estates situated in districts under the Government of the Lieutenant-Governor of the North-Western Provinces, distraint shall be made only through a Lumberdar.

Arrears of rent may be recovered by distraint under the following rules.

Cultivators who have given security to be exempt from distraint.

Proviso.

Proviso.

513. A distraint can only be levied for an arrear due from the actual cultivator in possession of the land.—*Mohini Dasi*, 1*st June*, 1864.

No distraint in certain cases.

CXIII. Distraint shall not be made for any arrear which has been due for a longer period than one year; nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless a written engagement for the payment of such excess has been executed by the cultivator.

Power of distraint to be exercised by managers under the Court of Wards, &c.

CXIV. The power of distraint vested by Section cxii, in zemindars and other persons entitled to receive rent from cultivators of land, may be exercised by managers under the Court of Wards, Sarbarahkars, and Tahsildars of estates held under khas management, and other persons lawfully entrusted with the charge of landed property; and also by the Naibs, Gomashtas, and other agents employed by any such persons as aforesaid in the collection of rent, if expressly authorized, by power of attorney, in that behalf. Provided that, if any illegal act is committed by any such Naib, Gomashta, or other agent under color of the exercise of the said power, the person employing such agent shall be liable, as well as the agent, for any damages accruing by reason of such act.

Proviso.

Standing crops and crops gathered but not stored liable to distraint.

CXV. Standing crops, and other ungathered products of the earth, and crops or other products, when reaped or gathered, and deposited in any threshing floor, or place for treading out grain, or the like, whether in the field or within a homestead, may be distrained by persons invested with the powers of distraint under the provisions of this Act. But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce, *after it has been stored* by the cultivator, and no other property whatsoever, shall be liable to distraint under this Act.

Defaulter to be served with a written demand, &c., before, or at the time of, distraint.

CXVI. Before, or at the time when, distraint is made under this Act, the distrainor shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. The demand and account shall, if practicable, be served, personally, on the defaulter, or, if he abscond, or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

Distress to be proportionate to the arrear if not paid or tendered.

List of property distrained to be served on owner.

CXVII. Unless the amount of the demand is, immediately, paid or tendered, the distrainor may distrain property as aforesaid, of value proportionate to the amount of the arrear, with costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Standing crops, &c., when attached to be reaped and stored by the cultivator, or, if he neglect to do so, by the distrainor.

CXVIII. Standing crops, and other ungathered products, may, notwithstanding the distraint, be reaped and gathered by the cultivator, and may be stored in such granaries or other places as are commonly used by him for the purpose. If the cultivator neglect to do so, the distrainor shall cause the said crops, or products, to be reaped or gathered, and, in such case, shall store the same, either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood. In either case, the distrained property shall be placed in the charge of some person appointed by the distrainor for the purpose. Crops or products which, from their nature, do not admit of being stored, may be sold before they are cut or gathered, under the rules hereinafter provided; but, in such case, the distraint shall be made at least twenty days before the time when the crops or products, or any part of the same, would be fit for cutting or gathering.

Distrainor may apply for aid to the Collector upon occasion of resistance made or apprehended.

CXIX. If a distrainor shall be opposed, or shall apprehend resistance, and shall desire to obtain the assistance of a public Officer, he may apply* to the Collector, and the Collector may, if he thinks necessary, depute an Officer to support the distrainor in making the distraint.

Persons empowered to distrain may give written authority to their servants to do so.

CXX. When any person, empowered to distrain property under Section cxii, or Section cxiv, shall employ a servant, or other person, to make the distress, he shall give to such servant or person a written authority (which may be on plain paper) for the same, and the distress shall be made in the name, and on the responsibility, of the person giving such authority.

Distress to be withdrawn if defaulter tender payment of arrear and expenses of attachment prior to the day of sale.

CXXI. If, at any time after property has been distrained, and prior to the day fixed for its being put up to sale as hereinafter provided, the owner of the property shall tender payment of the arrear demanded of him, and of the expenses of the distress, the distrainor shall receive the same, and shall forthwith withdraw the distress.

Application for sale.

CXXII. Within five days from the time of the storing of any distrained crops or products, or, if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress, the distrainor shall apply for sale of the same, to the Civil Court Amín or other Officer authorized to sell property in satisfaction of decrees of the Civil Court within the circle in which the distrained property is situate, or to such other public Officers as the local Government shall appoint for the purpose.

Form of application.

CXXIII. The application shall be in writing, and shall contain an inventory or description of the property distrained, the name of the defaulter and his place of residence, the amount due, and the date of the distress, and the place in which the distrained property is deposited.

Cost of notice upon defaulter to be deposited by distrainor.

Together with the application, the distrainor shall deliver to the Civil Court Amín, or other Officer, the amount necessary for the service of a notice upon the defaulter as hereinafter provided.

* For proper Stamp, see Board's Rule I. See also Rule VI.

CXXIV. Immediately on receipt of the application, the Civil Court Amín or other Officer, shall transmit a copy of it to the Collector; and shall serve a notice, (which shall be in the form (G) contained in the Schedule to this Act, or to the like effect), on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector within the period of fifteen days from the receipt of the notice He shall, at the same time, send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited. The proclamation shall contain a description of the property, the demand for which it is to be sold, and the place where the sale is to be held.

Procedure by Civil Court Amín, &c., on receipt of application.

CXXV. If a suit shall be instituted before the Collector in pursuance of the aforesaid notice, the Collector shall transmit to the Civil Court Amín, or other Officer, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit; and, on such certificate being received by, or presented to, the Amín or other Officer, he shall suspend proceedings in regard to the sale of the distrained property.

Amín to suspend sale on receipt of Collector's certificate of the institution of a suit.

CXXVI. A person whose property has been distrained in the manner hereinbefore provided, may institute a suit to contest the demand of the distrainor immediately after the distraint of his property, and before the issue of notice of sale. When such suit is instituted, the Collector shall proceed in the manner prescribed in the last preceding Section. If, thereafter, application for the sale of the property is made to the Civil Court Amín, or other Officer, he shall transmit a copy of the application to the Collector, and suspend further proceedings pending the decision of the case.

Suit to contest distrainor's demand before issue of notice of sale.

CXXVII. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with security* binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit; and, when such bond is executed, the Collector shall give to the owner of the property a certificate to that effect, or, if so requested, shall serve the distrainor with notice of the same: and upon such certificate being presented to the distrainor by the owner of the property, or served on him by order of the Collector, the property shall be released from distraint.

Distress to be withdrawn on receipt of Collector's certificate that the owner has executed a bond with security to pay amount of decree with interest and costs.

CXXVIII. On the expiration of the period fixed in the proclamation of sale, if the institution of a suit to contest the demand of the distrainor has not been certified to the Civil Court Amín, or other Officer, in the manner hereinbefore provided, he shall, unless the said demand, with such costs of the distress as shall be allowed by him, be discharged in full, proceed to sell the property, or such part of it as may be necessary, in the manner following.

On expiration of period fixed in the proclamation of sale, if institution of suit to contest distrainor's demand have not been certified, sale may be proceeded with.

CXXIX. The sale shall be held at the place where the distrained property is deposited, or at the nearest ganj, bazar, hat, or other place of public resort, if the Civil Court Amín, or other Officer, should be of opinion that it is likely to sell there to better advantage. The property shall be sold by public auction in one or more lots, as the Officer holding the sale may think advisable; and, if the demand with the costs of

Place and manner of sale of distrained property.

* Board's Rule XI. 7.

distress and sale be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn, with respect to the remainder.

If a fair price be not offered, sale may be postponed to another day, and shall be then completed at whatever price may be offered.

CXXX. If, on the property being put up for sale, a fair price, in the estimation of the Officer holding the sale, be not offered for it, and the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or the next market day, if a market be held at the place of sale, the sale shall be postponed until such day, and shall be then completed at whatever price may be offered for the property.

Payment of purchase money.

CXXXI. The price of every lot shall be paid for in ready money at the time of sale, or as soon after as the Officer holding the sale shall think necessary; and, in default of such payment, the property shall be put up again and sold. When the purchase money has been paid in full, the Officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Proceeds of sale.

CXXXII. From the proceeds of the sale of distrained property, the Officer holding the sale shall make a deduction, at the rate of one anna in the Rupee, on account of the costs of the sale, and shall transmit the amount to the Collector in order that it may be credited to Government. He shall then pay, to the distrainor, the expenses incurred by the distrainor on account of the distress, and of the issue of the notice and proclamation of sale prescribed in Section cxxiv. to such amount as, after examination of the statement of expenses furnished by the distrainor, he shall think proper to allow. The remainder shall be applied to the discharge of the arrear for which the distraint was made, with interest thereon up to the day of sale, and, if there be any overplus, it shall be delivered to the person whose property shall have been sold.

Officers holding sales prohibited from purchasing.

CXXXIII. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such Officers, are prohibited from purchasing, either directly or indirectly, property sold by such Officers.

All irregularities to be reported to the Collector.

CXXXIV. Civil Court Amíns, and other Officers as aforesaid, are required to bring to the notice of Collectors any material irregularities committed by distrainors under color of the Act; and if, in any case, on proceeding to hold a sale of property, the Civil Court Amín, or other Officer, shall find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale, and report the case to the Collector, and the Collector shall direct the issue of another notice and proclamation of sale under Section cxxiv, or pass such other order as he may think proper.

Officer not to proceed to sale, if he find that defaulter has not received due notice.

Recovery of expenses if Amín proceeds to place of sale and no sale takes place.

CXXXV. When a Civil Court Amín or other Officer has proceeded to any place for the purpose of holding a sale, and no sale takes place, either for the reason stated in the last preceding section, or because the demand of the distrainor has been previously satisfied, (no intimation of such satisfaction having been given by the distrainor to the Civil Court Amín or other Officer,) the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property. If the demand of the distrainor be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by sale of such portion thereof as may be necessary. In every other cases it shall be paid by the distrainor, and may be recovered by attachment and sale of the property of the distrainor under the warrant of the Collector. Provided always that, in no case, shall a larger amount than ten rupees be recoverable under this section.

CXXXVI. All proceedings under this Act of the Civil Court Amíns, and other Officers as aforesaid, shall be subject to the revision and orders of the Collectors, and the Collectors, with the sanction of the Board of Revenue,* may require the submission of such periodical reports and statement of business performed by the Civil Court Amíns and other Officers as may be thought necessary.

Proceedings of Civil Court Amíns, &c., subject to revision and orders of Collectors.

CXXXVII. When a suit has been instituted to contest the demand of a distrainor, and the property has not been released on security, if the demand, or any portion of it, shall be adjudged to be due, the Collector shall issue an order to the Civil Court Amín, or other Officer, authorizing the sale of the property, and, on the application of the distrainor, (which shall be made within five days from the receipt of such order by the Civil Court Amín or other Officer), such Amín, or Officer, shall publish a second proclamation in the manner prescribed in section CXXIV; fixing another day for the sale of the distrained property, which shall not be less than five, nor more than ten, days from the date of the proclamation; and, unless the amount adjudged to be due, with the costs of distress, be paid intermediately, shall proceed to sell the property in the manner hereinbefore provided.

Second proclamation of sale.

CXXXVIII. In all suits instituted to contest the demand of a distrainor, the distrainor shall be required to prove the arrear in the same manner as if he had, himself, brought a suit for the amount, under the foregoing provisions of this Act. If the demand, or any part thereof, is found to be due, the Collector shall make a decree for the amount in favor of the distrainor, and the amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn, and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter, or, if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety. If, on the other hand, the distraint is adjudged to be vexatious or groundless, the Collector, besides directing the release of the distrained property, may award such damages in favor of the plaintiff as the circumstances of the case shall seem to require.

Procedure after institution of suit to contest distrainor's demand.

CXXXIX. If any person shall claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, such person may institute a suit against the distrainor and such other person, to try the right to the property, in the same manner, and under the same conditions, as to the time of instituting the suit, and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him, may institute a suit to contest the demand. When any such suit is instituted, the property may be released, upon security being given for the value of the same. If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainor. If the claim is upheld, the Collector shall decree the release of the distrained property with costs, and such damages, (if any), as the circumstances of the case may seem to require. Provided always that no claim to any produce of land liable to distraint under this Act, which, at the time of the distress, may have been found in the possession of a defaulting cultivator, whether such claim be in respect of a previous sale, mortgage, or otherwise, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any Civil Court pervail against such prior claim.

Any person whose property has been distrained for arrears of rent alleged to be due from another, may institute a suit against the distrainor, &c.

Proviso.

* See Board's Rule IV. 13.

CXL. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrear is claimed by, or on behalf of, any person other than the distrainor, on the ground of such other person being actually, and in good faith, in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such other person, before, and up to the time of, the commencement of the suit, shall be enquired into, and the suit shall be decided according to the result of such enquiry. Provided always that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court, if instituted within one year from the date of the decision.

Procedure if distrainors's right to distrain be disputed.

CXLI. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due, or alleged to be due, from some other person, is prevented by any sufficient cause from bringing suit to contest the demand, or to try the right to the property as the case may be, within the period allowed by Section cxxiv and cxxxix., and his property is, in consequence, brought to sale, he may, nevertheless, institute a suit under this Act to recover damages for the illegal distress and sale of his property.

Persons prevented from suing in time to save their property from sale, may sue for damages.

CXLII. If any person empowered to distrain property or employed for the purpose, under a written authority, by a person so empowered, shall distrain, or sell, or cause to be sold, any property, for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act; or, if any distrained property shall be lost, damaged, or destroyed, by reason of the distrainor not having taken proper precaution for the due keeping and preservation thereof; or, if the distraint shall not be immediately withdrawn when it is required to be withdrawn by any provision of this Act; the owner of the property may institute a suit, under this Act, to recover damages for any injury which he may have, thereby, sustained.

All persons aggrieved by any illegal act of distrainor.

CXLIII. If any person not empowered to distrain property under Sections cxii and cxiv of this Act, nor employed for the purpose under a written authority by a person so empowered, shall distrain, or sell, or cause to be sold, any property under color of this Act, the owner of the property may institute a suit under this Act, to recover damages from such person for any injury which he may have sustained from the distraint or sale. The said person shall be held to have committed criminal trespass, and shall be subject to the penalties for that offence, in addition to any damages which may be awarded against him in such suit.

Unlawful distraint.

514. A suit for damages under this section only lies if the relationship of landlord and tenant exists between the parties.—*Raghu Nath Sahay, 26th August,* 1864.

CXLIV. Provided always that any suit which may be instituted under any of the last three Sections, shall be commenced within three months from the date of the occurrence of the cause of action.

Time for commencing suits for damages.

515. The cause of action lasts as long as the illegal act lasts, and limitation runs from the date of its cessation.—*Hiraman Singh, 5th May,* 1863.—*Tarini Charan Bose, 11th July,* 1865.

CXLV. If any person shall resist* a distraint of property duly made under this Act, or shall, forcibly or clandestinely, remove any distrained property, the Collector, upon complaint† being made within fifteen days from the date of such resistance or removal, shall cause the person accused to be arrested, and, if the offence be proved, and the offender be the owner of the property, shall order him to be imprisoned in the civil jail for six months, or

Resistance of distraint.

* For proper stamp, see Board's Rule I. See also Rule VI, 4.

† See Section XVIII, Act VI of 1862, B. C.

until the whole arrear due to the distrainor, with all expenses and costs, shall, sooner, be paid, or levied by distress and sale of the property of the offender under warrant of the Collector. If the person convicted of the offence be any other than the owner of the property, he shall make good to the distrainor the value of the same, and shall, further, be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment for a period not exceeding two months.

CXLVI. Every process issued by a Collector under this Act shall be under the seal and signature of the Collector, and shall be served or executed by the Nazir, or by such other Officer as the Collector may direct, at the cost of the party at whose instance it is issued. The amount of such cost, and, in the case of summons to a witness, any sum required for the travelling expenses of such witness, shall be deposited in Court before the process is issued. Provided that, if, in any case, the Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Service of process.

CXLVII. Any resistance or opposition to the lawful process of a Collector under this Act, may be punished by the Collector according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of Civil Justice.* When, in any such case, the offender is not present in Court, the Collector may summon him to answer to the charge, and if, after due service of the summons, he fail to attend, may issue a warrant for his apprehension. Orders passed by Collectors under this Section, shall not be deemed to be orders relating to the trial of suits or to the execution of decrees within the meaning of Section CLI.

Resistance of process.

CXLVIII. It shall be competent to the Collector to hold a Court for hearing and determining suits under this Act, in any place within the limits of his district or local jurisdiction, provided that every hearing and decision shall be in open Court, and that the parties to the suit, or their authorized agents, shall have had due notice to attend at such place.

Collector competent to hold a Court in any part of his jurisdiction.

Proviso.

CXLIX. *Repealed. Act XX of* 1865 *substituted.*

CL. *Repealed. Section XIV, Act VI.*, 1862 (*B. C*), *substituted.*

CLI. In the performance of their duties under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners† and the Board of Revenue, and the Deputy Collectors shall be subject to the direction and control of the Collectors† to whom they are subordinate. All *orders* passed by a Collector under this Act, *not being judgments in suits, or orders passed in the course of suits, and relating to the trial thereof*, or *orders passed after decree, and relating to the execution thereof*, shall be appealable to the Commissioner: and all such orders passed by a Deputy Collector shall be appealable to the Collector; but no judgment of a Collector or Deputy Collector in any suit, and no order of a Collector, or Deputy Collector passed in any suit and relating to the trial thereof, or after decree, and relating to the execution thereof, shall be open to revision or appeal, otherwise than as expressly provided in this Act.‡

Collectors and Deputy Collectors to be subject to direction and control of the Commissioners and the Board of Revenue.

No appeal from orders of Collectors and Deputy Collectors in certain cases.

516. According to this Section, a tenant, whose tenure has been sold in execution of a decree for rent accruing on that tenure, under Section CV, cannot bring an action in the Civil Court to set aside that sale. The Collector's order in this respect is final.—*Ratan Mani Dasi*, 16*th March*, 1864.

* Penal Code, cap., X.

† See Board's Rule XX.

‡ See Board's Rule XXI.

517. A Collector or Deputy Collector cannot review his own order passed in execution of decree.—*Raja Pratap Chandra Singh*, 15*th May*, 1865.

518. But, if he do so, the Collector cannot interfere with his proceedings. The High Court alone can do so under Section 35, Act XXIII of 1861.—*Adarmani Dasi*, 21*st July*, 1865.

519. A judicial order passed by a Collector, is open to appeal under the provisions of Sections clx. and clxi., though it has reference to the execution of a decree.—*R. Solano*, 19*th April*, 1864

520. A person ousted in execution of a decree to which he was not a party, has a right of action for reinstatement.—*Amrit Lal Bose*, 24*th March*, 1865.

521. Even though his name be not registered in the landlord's books, and although he have not intervened under Section CVI.—*Mukta Keshi Dasi*, 9*th August*, 1865.

522. No appeal lies to the Judge in regard to a sale (in execution of a decree under this Act) under Act XI of 1859. The High Court would not, in this case, set matters right under Section 35, Act XXIII of 1861, because no appeal had been made to the Commissioner under Section 25, Act XI of 1859.—*Sirdar Ghulab Singh*, 18*th November*, 1865.

523. A suit lies to the Civil Court to remedy an order passed, *wholly without jurisdiction*, by the Revenue Courts, even in execution of decree.—*Janaki Lal*, 31*st August*, 1865.

524. An appeal to the Civil Court lies, if fraud is alleged. (FULL BENCH).—*Nilmani Banik*, *February*, 1866.

525. And where a third party has been injured (FULL BENCH).—*Madan Lal Babu*, 5*th February*, 1866.

Time for presenting appeals from orders.

CLII. Every appeal against the order of a Collector shall be presented to the Commissioner within thirty days, and every appeal against the order of a Deputy Collector shall be presented to the Collector within fifteen days from the date of the order. Orders passed in appeal by a Commissioner or a Collector shall not be open to any further appeal: but the Board of Revenue or the Commissioner may call for any case, and pass such orders thereon as they may think proper.

No appeal from any decree of a Collector for money below 100 Rs., unless the decision involve some question of right to enhance rents, or some question relating to a title to land.

CLIII. In suits under Clauses, 2, 4, and 7 of Section xxiii, and under Section xxiv of this Act tried and decided by a Collector, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, the judgment of the Collector shall be final, and not open to revision or appeal, except as hereinafter provided, unless, in any such suit, a question of right to enhance, or otherwise, vary the rent of a ryot or tenant, or any question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in Sections clx and clxi of this Act.

526. The denial by a ryot of the execution of a kuboolyat in a suit for arrears of rent under Section xxiii, Clause 4, does not give rise to any question of title.—*Hari Nath Ghose*, 14*th April*, 1863.

527. Specimen of a case involving a question relating to title to land.—*Jogeshwar Bhatacharyya*, 22*nd May*, 1865.

In suits not open to appeal, Collector may grant a re-hearing upon the discovery of new evidence, &c.

CLIV. In suits in which the judgment of the Collector is final, as provided in the last preceding Section, the Collector may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence, or matter, material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

Appeal from decision of Deputy Collector.

CLV. When any such suit as aforesaid, in which, if tried and decided by a Collector, the judgment of the Collector would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Collector.

Petition of appeal to be on stamp paper, &c.

CLVI. The petition of appeal shall be written on stamp paper of eight annas value, and shall be presented to the Collector within fifteen days from the date of the decree, provided that such time as may be requisite for procuring a copy of the decree appealed against shall not be reckoned as part of the fifteen days.

528. An Appellate Court is bound to give reasons for its decisions, and to dispose of the objections of the party against whom it decides.—*Kazi Muhammad Zakir*, 23*rd February*, 1865.

529. An appeal having been erroneously made to the Collector, instead of to the Judge, it was doubtful whether High Court could allow further time for appealing to the Collector.—*Rajballab Bhanj*, 10*th August*, 1863. The Collector certainly cannot do so.—*Kali Kishwar Pal*, 20*th March*, 1866.

Procedure in appeal.

CLVII. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear, in person or by an agent, the appeal shall be dismissed for default. If the appellant shall appear, and the respondent shall not appear, in person or by an agent, the appeal shall be heard *exparte*.

Re-admission of appeal.

CLVIII. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal, and, if it shall be proved to the satisfaction of the Collector that the appellant was prevented, by any sufficient cause, from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Judgment in appeal.

CLIX. After hearing the appeal, the Collector shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final.

530. In such cases the High Court can exercise no revising powers of control.—*Hara Mohan Mukharjya*, 9*th February*, 1866.

In what suits appeal to lie to Zillah Judge.

To High Court.

CLX. In all suits other than those in which, when tried and decided by a Collector, the judgment of the Collector is declared to be final, or, when tried and decided by a Deputy Collector, an appeal is allowed to the Collector, an appeal from the judgment of the Collector or Deputy Collector shall lie to the Zillah Judge, unless the amount, or value, in dispute exceed five thousand rupees, in which case the appeal shall lie to the High Court.

531. Judgments passed in appeal by the Zillah Judges under this Section are open to special appeal.—*Hallodhar Biswas*, 30*th March*, 1861.

532. The misconstruction by the Court of a written document, which forms the basis of a plaintiff's claim, or a defendant's answer under this Act, is a substantial error in law, and consequently may be made the ground of *special appeal*.—*Raja Prankishn Singh Sarmma*, 1*st October*, 1861.

533. If a misapprehension by a Judge of the finding of a Lower Court, cause an error in procedure by which a party to the suit may be prejudiced, a special appeal will lie.—*Dina Nath Mukharjya*. 24*th June*, 1863.

534. In special appeal, the High Court can only interfere when Lower Court finds on no evidence, or on what is not legal evidence.—*Ram Sundar Sirkar*, 3*rd March*, 1863.

535. Parties not before the Lower Appellate Court cannot be heard in special appeal.—*Bykunth Ram Sahu*, 1*st July*, 1861.

Rules regarding presentation and hearing of appeals.

CLXI. The petition of appeal shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts, with reference to the amount, or value, of the property involved in the appeal; and the rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or High Court under this Act.

536. By the word *decision* the Legislature meant the decree and judgment taken together, and not simply the decree unexplained by the judgment.—*Maharani Indrajit Kunwar*, 19*th February*, 1863. (FULL BENCH).

537. When the jurisdiction of the Collector and of the Civil Judge of a district are not conterminous, suits will be instituted before the Collecter in whose jurisdiction the land which is the subject of the suit lies, but the appeal will lie to the Judge in whose civil jurisdiction the land is situate.—*Latif-un-nissa Bibi*, 22*nd August*, 1862.

538. Where the interests of several parties to a suit are identical, the case of all may be disposed of on the appeal of one.—*Ram Chandra Choudhary*, 24*th September*, 1863.

539. A Court of Appeal cannot decide a case upon an issue not tried in the Court of first instance.—*Ishwar Chandra Ghosal*, 20*th August*, 1864.

540. The Judge must not decline to hear an appeal from the judgment of the Collector, because it has not been passed rightly in form.—*Shekh Ghulam Ahya, 25th May*, 1865.—*Hari Bandhu Maiti, 5th December*, 1865.

541. Where an appeal has been made by mistake to the Collector, instead of to the Judge, and so the time allowed by the law, ordinarily, for an appeal to the Judge is lost, the Judge should exercise the discretion allowed to him by the law, and admit the appeal after time.—*Bhoja Hari Dhara Singh, 4th June*, 1862.—*Madhu Sudan Majumdar, 14th March*, 1866.

542. A Judge is competent to review his judgment in an Act X case, as Act VIII of 1859 has been declared to apply, as far as it is applicable, to suits under the former Act, and Section 381 of Act VIII allows a Judge, under certain conditions, to review his judgment.—*Shekh Najib, 11th June*, 1862.

543. A Judge, upon review, cannot, however, allow a plaintiff to shift his ground and set up a new case.—*Nara Hari Mahant, 12th August*, 1862.

544. An order passed, in appeal, by a competent Court must prevail over an order passed by a subordinate Court in another case not appealable, if the subordinate order be indirectly modified or reversed.—*Hara Mohan Mukharjya, 12th March*, 1866.

CLXII. *Repealed. Section xx., Act VI., 1862, (B. C.) substituted.*

Collector not to exercise jurisdiction in respect to lands situate beyond his district.

CLXIII. No Collector shall exercise any jurisdiction under this Act in respect to any lands situate beyond the limits of the district to which he is appointed, by reason of such lands forming part of an estate the revenue of which is paid into the treasury of the said district.

Deputy Collector entrusted with Police functions, not to exercise judicial powers under this Act.

CLXIV. No Deputy Collector appointed under Regulation IX., 1833, of the Bengal Code, shall exercise any judicial powers or other jurisdiction under this Act, if entrusted with any Police functions.

What powers to be exercised by Assistants to Collectors.

CLXV. Assistants to Collectors shall not exercise any powers under this Act, unless invested by Government with the powers of Deputy Collector, in which case they may exercise the powers hereby assigned to Deputy Collectors.

Saving of rights of proprietors in respect of patni taluks, &c., under Regulation VIII., 1819.

CLXVI. Nothing contained in this Act shall be held to affect the right vested in proprietors of land under direct engagements with Government, of bringing to sale for arrears of rent, patni taluks and other similar tenures under the provisions of Regulation VIII of 1819.*

Commencement of Act.

CLXVII. *(Obsolete).*

"Civil Jail."

CLXVIII. The words "Civil Jail" as used in this Act shall include the Civil Jail of the zillah, and any place appointed by the Executive Government for the confinement of prisoners by any Court constituted under this Act. The word "Nazir" shall include any officer of a Court authorized to serve or execute its process. Unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

"Nazir."

"Number."

"Gender."

SCHEDULE

FORM A. (*See Sections xliii & xliv*)

FORM OF SUMMONS TO DEFENDANT.

No. (of suit) dated
In the Court of

A. B., Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*), you are hereby required to appear in person in this Court

* Vide Appendix (D.)

on the day of [*if not specially required to appear in person, state "in person or by an agent who has personal knowledge of the subject, or who shall be accompanied by a person who has such knowledge"*] to answer the above named plaintiff, and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM B. (*See Section xlix.*)

FORM OF WARRANT OF ARREST.

No. (of suit) dated
In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of

Whereas the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 18

FORM C. (*See Section xlix.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description, and address of Plaintiff.*]

C. D., Defendant.

[*Name, description, and address of Defendant.*]

Whereas the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM D. (*See Section li.*)*

FORM OF SECURITY BOND FOR APPEARANCE OF DEFENDANT.

Whereas A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D., defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is depending and until execution of the decree, I, E. F., hereby declare myself security for the said C. D.'s appearance as aforesaid, and in case of making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. (*If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*)

FORM E. (*See Section xciii.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of

Whereas C. D. was directed by a decree of this Court, under date the day of 18, to pay to A. B. the sum of land for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C D. and to bring him with all convenient speed before this Court to be dealt with according to law.

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* On an 8-anna Stamp: see Board's Rule XI.

FORM F. (*See Section xcviii.*)
WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Nazir of the Court of the Collector of

Whereas C. D. was directed, by a decree of this Court, under date the day of 18 to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said C. D. as is described in the list annexed, and [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D. on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

FORM G. (*See Section cxxiv.*)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of Commissioner for sale of distrained property.

A. B., Distrainor.

[*Name, description, and address of the owner of the property.*]

Whereas the said A. B. has applied to have the distrained property specified below sold for the recovery of alleged to be due to him as arrears of rent, you are hereby required either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 18

NOTE.—FOR FORM OF PROCLAMATION FOR DEFENDANT (*Section lii*) AND SUMMONS TO WITNESS (*Section lxvi.*), *see Appendices II. and I. to Board's Rules.*

ACT VI OF 1862.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

(Received the assent of the Governor-General on the 1st May, 1862.)

AN ACT *to amend Act X. of* 1859.*

Preamble.

WHEREAS it is expedient to amend Act X of 1859, so far as the same relates to the Provinces subject to the Government of Bengal; It is enacted as follows:—

Repeals certain Sections of Act X of 1859.

I. Sections xxvi., xl., lxxiv., lxxix., lxxxvi., cl., and clxii. of Act X of 1859, are hereby repealed, except as regards suits under the said Act X of 1859 instituted prior to the passing of this Act.

The Court may in certain cases award to the plaintiff additional damages not exceeding 25 per cent.

II. In any suit for rent under Act X of 1859, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected, or refused, to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorized agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount with the Collector, before the institution of the suit, in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages,† not exceeding twenty-five per cent. on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per cent. per annum from the date of decree until payment thereof, and shall be recoverable from the defendant in like manner as sums decreed to be paid by defendants under Act X of 1859 are recoverable.

545. Damages under this Section cannot be recovered, unless specially alleged and claimed in the plaint. The absence of reasonable or probable cause for defendant withholding the rent is a matter incumbent on the plaintiff to prove.—*Hara Mohan, 9th September*, 1863.—*Bolai Chandra Dutt, 22nd June*, 1864.

546. If damages are awarded under this Section, interest cannot be, separately, awarded under Section 20 of Act X of 1859. The damages are to be regarded as in lieu of interest. The pendency of a suit for enhanced rent is not *per se* a reasonable cause for neglect to pay rent at the old rate. Damages cannot be awarded under this Section for delay in payment before the passing of this Act.—*Nava Kanth De, 9th September*, 1864.

The Court may award compensation, not exceeding 25 per cent. on the amount sued for, to a defendant improperly sued.

III. In any suit for rent under Act X of 1859, if it shall appear to the Court that the plaintiff has instituted the suit against the defendant, without reasonable or probable cause, or that the defendant, before the institution of the suit, duly deposited with the Collector, in the manner hereinafter mentioned, the full amount which the Court shall find to have been due to the plaintiff at the date of such deposit, it shall be lawful for the Court to award to the defendant, by way of compensation, such sum, not exceeding twenty-five per cent. on the whole amount claimed by the plaintiff, as the Court may think fit; and such sum, with interest at the rate of twelve per cent. per annum until payment thereof, shall be recoverable from the plaintiff, in like manner as sums decreed to be paid by defendants under Act X of 1859 are recoverable.

* Such words as "hereafter to be brought," used throughout this Act, are omitted from the text as obsolete.

† Board's Rule XI, 6.

IV. If any under-tenant or ryot shall, at the mâl kacherry for the receipt of rents, or other place where the rents of the land held or cultivated by him are usually payable, tender payment of what he shall consider to be the full amount of rent due from him at the date of the tender, to the zemindar or other person in receipt of the rent of such land, and, if the amount so tendered shall not be accepted, and a receipt in full, forthwith, granted, it shall be lawful for the under-tenant or ryot, without any suit having been instituted against him, to deposit such amount in the Collector's Court, to the credit of the zemindar or other person aforesaid; and such deposit shall, so far as the under-tenant or ryot and all persons claiming through, or under, him are concerned, in all respects, operate as, and have the full effect of, a payment then made by the under-tenant or ryot, of the amount deposited, to such zemindar or other person.

Under-tenant or ryot may, after tender, &c., pay into Court, without any action being brought against him, what he admits to be due to his zemindar, &c.

Payment into Court to have effect of payment to zemindar or other person entitled.

547. It does not follow that a tender, not followed up by a deposit in Court, is not to be recognized.—*Bishwanath Deb, 27th March*, 1865.

V. The Collector shall receive such deposit on the application of the under-tenant or ryot, or his agent, made, in writing, upon paper bearing a stamp of such value as would be necessary on the institution of a suit for arrears of rent under Section xxxvii of Act X of 1859* for an amount equal to that which it is intended to deposit; and, on the under-tenant or ryot, or his agent, making a declaration in the form, or, as nearly as circumstances will admit, in the form set forth in the Schedule (A) hereto annexed, the Collector shall give a receipt for the same. If the declaration shall contain any averment which the person making the declaration shall know or believe to be false, or shall not know or believe to be true, such person shall be subject to punishment according to the law for the time being in force for the punishment of giving or fabricating false evidence.† Upon receiving the money so deposited, the Collector shall issue a notice to the person to whose credit it has been deposited, in the form set forth in the Schedule (B) hereto annexed; and such notice shall be served by the Collector, without the payment of any fee, either upon the person to whom it is addressed, or upon his naib, gomashta, or other agent; and, in the absence of any such agent, it shall be served by sticking up a copy of the same in the office of the Collector, and another copy at the mal kacherry for the receipt of rents, or other place where the rents are usually paid for the land in respect of which the money has been deposited. If the person to whom such notice is issued, or his duly authorized agent, shall appear and apply that the money in deposit be paid to him, it shall be, immediately, made over to him.

Proceedings on making a payment into Court and the drawing out the money.

VI. Whenever a deposit shall have been made under the provisions of this Act, no suit shall be brought against the person making the deposit, or his representatives, on account of any rent which accrued due prior to the date of the deposit, unless such suit is instituted within six months from the date of the service of the notice in the 5th Section of this Act mentioned.

Suit for further balance to be instituted within six months of service of notice of deposit.

VII. The defendant in any suit under this Act, or under Act X of 1859, may, if he have duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he shall consider to be due to the plaintiff, without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall be, immediately, paid out of Court to the

After action brought, defendant may pay into Court, without costs, money tendered before action brought.

* Repealed. For proper Stamp, see Board's Rule I.
† Penal Code, Cap. XI.

plaintiff If, after such payment, the plaintiff elects to proceed in the suit, and, ultimately, recovers no further sum than shall have been paid into Court, the plaintiff shall be charged with the whole costs of the suit incurred by the defendant, but if the plaintiff, ultimately, recovers a further sum than shall have been paid into Court, the defendant shall be charged with the whole costs of the suit

Costs if plaintiff goes on and recovers no more

VIII The defendant in any suit under this Act, or under Act X of 1859, may, without having made any tender before action brought, pay into Court such sum of money as he shall consider to be due to the plaintiff, together with the costs (to be fixed by the Court if necessary, as of a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment, and such sum shall, immediately, be paid out of Court to the plaintiff If, after such payment, the plaintiff elects to proceed in the suit, and, ultimately, recovers no further sum than shall have been paid into Court, he shall be charged with all costs incurred by the defendant subsequently to such payment, but if the plaintiff ultimately recovers a further sum than shall have been paid into Court, the defendant shall (including the sum paid into Court by him in the first instance on account of costs) be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree.

If no previous tender has been made, defendant may pay into Court what he admits to be due with costs on that sum

Costs if plaintiff goes on with the suit

IX Every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure, has a right of making a general survey and measurement of the lands comprised in such estate or tenure, or any part thereof, unless restrained from doing so by express engagement with the occupant of the lands If any person, intending to measure any land which he has a right to measure, is opposed in making such a measurement by the occupant of the land, or, if any under-tenant or ryot, having received notice of the intended measurement of land held or cultivated by him which is liable to such measurement, refuses to attend and point out such land, such person may make application* to the Collector, and the Collector shall, thereupon, proceed to inquire into the case, in the manner provided for suits under Act X of 1859, and shall pass a decision either allowing, or disallowing, the measurement, and, if the case so require, enjoining, or excusing, the attendance of any such under-tenant or ryot If any under tenant or ryot, after the issue of an order enjoining his attendance, neglects to attend and to point out the land, it shall not be competent to him to contest the correctness of the measurement made, or any of the proceedings held in his absence

Survey and measurement of lands

548 A farmer can exercise the powers given by this Section.—*Robert Watson and Co*, *7th July*, 1864

549 So can a shareholder —*Sambhu Chandra Sadhu Khan*, *30th August*, 1864

550 Lands comprised in an under-tenure may be measured by the proprietor of the parent estate —*Anund Mohan Bandopadhyay*, *15th September*, 1865

551 Proof of previous receipt of rent is not indispensable, if possession is otherwise satisfactorily proved —*Ray Chandra Ray*, *2nd September*, 1865

552 An under tenant or ryot is in no way bound by a measurement, under this Section made in his absence, unless he has received notice —*Jadab Chandra Haldar*, *14th May*, 1863

X If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands or any part of the lands comprised therein, such proprietor or other person may petition* the Collector in respect of the lands which he cannot measure as aforesaid, and the Collector,

Measurement of lands, where it cannot be ascertained who are the persons liable to pay rent

* For proper Stamp, see Board's Rule I

thereupon, and on the necessary costs being deposited with him by the applicant, shall proceed to measure the land, and to ascertain and record the names of the persons in occupation of the same, or, on the special application* of the proprietor or other person aforesaid, but not otherwise, shall proceed to ascertain, determine, and record the tenures and under-tenures, the rates of rent payable in respect of such lands, and the persons by whom respectively the rents are payable. The provisions of Section lxvii. of Act X. of 1859 shall apply to any proceeding of the Collector instituted under this Section. If, after due enquiry, the Collector shall be unable to measure the land, or to ascertain, or record, the names of the persons in occupation of the same, or if he shall (in any case in which such special application shall have been made as aforesaid) be unable to ascertain who are the persons having tenures or under-tenures in such lands or any part thereof, then, and in any such case, he may declare the same to have lapsed to the party on whose petition he has made the enquiry. If any person, within fifteen days after the Collector shall have recorded the name of such person as being in occupation of such land or any part thereof, or shall have declared a tenure to have lapsed, shall appear and show good and sufficient cause for his previous non-appearance, and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms or conditions as he may think proper, alter or rescind his declaration according to the justice of the case. Save as aforesaid, the decision of the Collector on all matters enquired into and determined by him under this or the last preceding Section, shall be final, unless the same shall be reversed on appeal therefrom to the Civil Court. Such appeals shall lie to the Zillah Judge or to the High Court, subject to the provisions and conditions contained in Sections clx. and clxi of Act X. of 1859.

Mehsurements to be made by the pergunnah pole.

XI. All measurements made under this Act shall be made by the standard pole of measurement of the pergunnah in which the land is situated.

553. The standard measure of the pergunnah is to be ascertained by judicial enquiry.—*Hara Mohan Mukharjya*, 10*th August*, 1864.—*Ramesh Charan Dutt*, 19*th August*, 1864.

554. But there is no appeal from the order of a Collector declaring the standard.—*Tarak Nath Mukharjya*, 1*st February*, 1866.

555. There may be more than one standard of measurement in a pergunnah.—*Bhagavati Charan Bhattacharyya*, 26*th November*, 1864.

556. If there is a recognized standard of measurement in a territorial division less than a pergunnah, measurements should be made by it within the division.—*Sarvvanand Paure*, 21*st November*, 1865.

557. The Canungo's papers filed in a Collector's office are of great weight in questions connected with pergunnah rates, standards of measurement, and other like statistics, and should not be lightly rejected. A cubit (hath) is not always exactly 18 English inches long, but varies in length in different pergunnahs.—*Nand Dandpat*, 12*th January*, 1865.

Form of plaint in suits for arrears of rent.

XII. In any suit for the recovery of an arrear of rent, the statement shall specify the name of the village and estate and of the pergunnah or other local division in which the land is situate, the yearly rent of the land, the amount (if any) received on account of the year for which the claim is made, the amount in arrear, and the time in respect of which it is alleged to be due. If the arrear is alleged to be due from any ryot, the statement shall, further, specify the quantity of land, and, where fields have been numbered in a Government survey, the number (if it be possible to give it) of each field.

Order under Section lviii of Act X. of 1859 to set aside judgment shall be final, but rejection of application to set it aside shall be appealable.

XIII. In all cases in which the Collector shall pass an order under Section lviii of Act X. of 1859 for setting aside a judgment, the order shall be final; but, in all appealable cases in which the Collector shall reject the application, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable: provided that the appeal be preferred within the time allowed for an appeal from such final decision, and be written upon stamp paper

* Board's Rule IX.

of the value prescribed for petitions to the Court to which the appeal lies, where a stamp is required for petitions.

XIV. *(Indirectly repealed by Act XX of 1865).*

XV. The Collector shall pronounce* judgment in all cases tried under this Act or under Act X. of 1859, in open Court. The judgment shall be written in the vernacular language of the Collector, and shall contain the reasons for the same, and shall be dated and signed by the Collector at the time when it is pronounced. Provided that, if the vernacular language of the Collector be not English, and the Collector be sufficiently conversant with the English language to be able to write a clear and intelligible decision in that language, and prefer to write his judgment in it, the judgment may be written in English.

Language in which the Collector is to write his judgment.

558. By the word *decision* is meant the decree and judgment taken together, and not, simply, the decree unexplained by the judgment.—*Maharani Indrajit Kunwar*, 19*th February*, 1863.—FULL BENCH.

559. An order to "put up a petition with the record" is bad for informality, unless reasons in law can be given for it.—*Shekh Ghulam Ahya*, 25*th May*, 1865.

XVI. The provisions relating to attachment before judgment contained in Sections 81 to 90, both inclusive, of Act VIII. of 1859, (*for simplifying the Procedure of the Courts of Civil Judicature† not established by Royal Charter*) are hereby extended to all suits brought under this Act or Act X. of 1859.

Attachment before judgment.

XVII. Process of execution* in any suit instituted under this Act or under Act X. of 1859 may be issued against either the person or the property of a judgment-debtor, but process shall not be issued simultaneously against both person and property. It may be issued on the oral application of the judgment-creditor, his agent, or mukhtar, made at the time the judgment is pronounced, or, thereafter, upon the written application‡ of the judgment-creditor, his agent, or mukhtar, presented to the Court by which the judgment was given. Process of execution against the person or moveable property of a debtor shall be in the Form (E) or the Form (F) contained in the Schedule to Act X. of 1859, or in a form as nearly resembling those forms as the circumstances of the case may admit.

Execution to issue at time of decree on oral application: afterwards on application in writing.

560. Effect must be given to a decree, at once, without waiting to see the result of an appeal.—*G. Gregory*, 8*th July*, 1864.

561. In a suit for arrears of rent, the decree ought not to direct in what mode execution should issue.—*Syama Charan Chakravartti*, 4*th August*, 1862.

562. A decree modified by consent, and *coram judice*, may be executed as altered.—*Srishtidhar Saha*, 8*th January*, 1866.

563. Decree-holder may compromise with one of several joint debtors.—*Gopal Prasad* 25*th January*, 1866.

XVIII. If any person shall be arrested under Section cxlv of the said Act X. of 1859, he shall be brought before the Collector with all convenient speed, and the Collector shall proceed forthwith to try the case. If the case cannot be at once heard and determined, the Collector may, if he think fit, require the person arrested to give security for his appearance, whenever the same is required. In default of such security, the person arrested shall be committed to the civil jail till the case is heard.

If person is arrested under Section cxlv of Act X. of 1859, case to be disposed of at once.

XIX. All the powers vested in the Collector by any of the Sections of this Act or of Act X. of 1859, may be exercised by any Deputy Collector in cases referred to him by a Collector§ and, in all cases, without such reference, by any Deputy Collector placed in charge of any Sub-Division

Deputy Collector's powers.

* Board's Rule III.

† See Appendix B.

‡ For proper Stamp, see Board's Rule I.

§ See Board's Rule XI, 1.

of a District, or who is specially authorized by Government to receive such cases; and all applications and reports allowed or required by the said Act X of 1859, or by this Act, to be made to the Collector, may be made to any Deputy Collector having such local jurisdiction or such special authority as aforesaid.

564. A Deputy Collector may even try an appeal from the order of another Deputy Collector, referred to him by the Collector.—*Josim Kaghazi, 9th January*, 1865.

In what Court suits are to be instituted.

XX. Suits under this Act, or under Act X of 1859, shall be preferred in the Revenue Office of the District; or, when a Sub-Division of a District has been placed under the jurisdiction of a Deputy Collector, in the Revenue Office of the Sub-Division, in which the cause of action shall have arisen, or, when the cause of action shall have arisen within the limits of the local jurisdiction of any Deputy Collector not in charge of a Sub-Division, but who has been specially authorized by Government to receive such suits, then in the Office of such last-mentioned Deputy Collector. Provided always that the Collector may withdraw any suit from any Deputy Collector, and try it himself, or refer it to another Deputy Collector. If the lands comprised in any taluk, farm, or other tenure, or any lands held under one lease or engagement, or at one entire rent, in respect of which arrears of rent may be due, are situated in more than one District or Sub-Division, or within the local limits of the jurisdiction of more than one Deputy Collector so specially authorized as aforesaid, the District, or Sub-Division, or local limits, in which the greater part of such lands is situate, shall be held to be the District, or Sub-Division, or local limits, in which the cause of action has arisen, and if any question shall arise respecting the District, or Sub-Division, or local limits, within which the greater part of the lands is situate, the Board of Revenue, or, if all the lands be situate in one District, the Collector of the District, shall decide the question, and such decision shall be conclusive on the point of jurisdiction.

565. When the jurisdiction of the Collector and of the Civil Judge of a District are not conterminous, suits will be instituted before the Collector in whose jurisdiction the land which is the subject of the suit lies, but the appeal will lie to the Judge in whose civil jurisdiction the land is situated.—*Latif Unnissa Bibi, Appellant, H. C., 22nd August*, 1862.

This Act to be read with Act X of 1859.

XXI. This Act shall be read with, and taken as part of, Act X of 1859.

SCHEDULE A.*

I, A. B, of, &c., do solemnly declare that I did personally (*or* by my Agent C. D.) on the day of tender payment to E. F at his Mal cutcherry (*or* at the place where the rent of the lands at held or cultivated by me under or from the said E. F, are usually payable), of the sum of Rupees as and for the whole amount due from me in respect of the rent of the said lands from the month of to the month of both inclusive. I further declare that the said F F refused to accept the said sum so tendered (or to give me a receipt in full, forthwith, for the same.) And I do declare that, to the best of my belief, the sum of Rupees so tendered, and which I now desire to pay into Court, is the full amount which I owe the said E F. on account of the rent of the said lands from the month of to the month of both inclusive, and that I owe the said E. F. no further sum on account of the rent of the said lands

SCHEDULE B.†

Court of the Collector (or Deputy Collector) of
Dated the day of 18

To E. F., of, &c.

With reference to the within declaration, you are hereby informed that the sum of Rupees therein mentioned, is now in deposit in this Court, and that the above sum will be paid to you or to your duly authorized Agent, on application. And take notice that if you have any further claim or demand whatsoever to make against the said A. B. in respect of the rent of the said lands, you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred.

* If this declaration is made by an Agent, it must be altered accordingly.

† This is to be by endorsement on a copy of the Declaration under Schedule A, made by the person paying the money into Court.

RULES FOR THE GUIDANCE OF OFFICERS IN THE ADMINISTRATION OF THE RENT LAW, BEING CHAPTER XVI OF THE RULES OF THE BOARD OF REVENUE.

Section I.—Stamps.

Suits for arrears to be on quarter stamp.

1. Suits under Clause 4, Section xxiii, for arrears of rent on account of land, &c., *paying revenue to Government*, and suits under Section xxv. for money in the hands of an agent of *such lands*, may be written on paper bearing a stamp of one-fourth the value prescribed for a plaint or appeal in civil suits,* in Article 11, Schedule B., Act X of 1862. All other *suits* under Act X of 1859 and Act VI of 1862, B. C., *relating to lands paying revenue to Government*, are to be written on a stamp of the value of 8 annas. (*See Note g* †)

If for rent of Revenue-paying lands.

2. It is to be especially noted that these favorable provisions are applicable only to the case of *Revenue-paying lands*. *Suits* relating to *lands which pay no revenue to Government*, must be written on stamp paper of the full value* prescribed for suits instituted in the Civil Court. Dependent or subordinate tenures held without payment of *rent* to the zemindars, must not, however, be confounded with lands which pay no *revenue* to government.

Exemptions from Stamp Duty.

3. Applications for the issue of a notice of enhancement under Section xiii, and for the summons of witnesses under Section lxvi, and in respect of the production or filing of any exhibit, (*see Second General Exemption, Article* 10, *Schedule B, Act X of* 1862) and the written authority to a servant employed in distraint, under Section cxx, may be on *plain paper*. So also may be any petition or application in relation to any suit or case, (including executions of decree) under the rent laws of an amount or value less than fifty Rupees (*see First General Exemption, Article* 10, *as above*), and an application for a copy of the translation or a judgment—(*See Article V., Schedule B., Act X of* 1862.)

Act X. of 1862, Schedule B, Article 11.

					Proper Stamps.
					Rupees.
* If the amount or value of the property claim does not exceed				16 Rs.	1
Above	16 Rs.,	and not exceeding	32	„	2
Do.	32 „	„	64	„	4
Do.	64 „	„	150	„	8
Do.	150 „	„	300	„	16
Do.	300 „	„	800	„	32
Do.	800 „	„	1,600	„	50
Do.	1,600 „	„	3,000	„	100
Do.	3,000 „	„	5,000	„	150
Do.	5,000 „	„	10,000	„	250
Do.	10,000 „	„	15,000	„	350
Do.	15,000 „	„	25,000	„	500
Do.	25,000 „	„	50,000	„	700
Do.	50,000 „	„	1,00,000	„	1,000
Do.	1,00,000 „	„			2,000

† Special Rule for the Presidency of Bengal.

(*g*) In suits instituted in the Courts of Collectors and Deputy Collectors under Act X of 1859, for the recovery of arrears of Government Revenue or rent of land paying Revenue to Government, or of money in the hands of an Agent of such land, the statement of claim shall be written on paper bearing a stamp of one-fourth the value prescribed for suits instituted in the Civil Courts; and, in all other suits instituted in the Courts of Collectors and Deputy Collectors under the said Act, relating to lands paying Revenue to Government, the statement of claim shall be written on paper bearing a stamp of the value of 8 annas.

Applications.

4. An application to a Collector to receive a deposit of rent under Section v, Act VI of 1862, B. C., must be on a stamp of the value that would be necessary for the institution of a suit for an amount of arrears of rent on revenue-paying lands equal to the sum to be deposited. All other *written applications* (as distinguished from *suits*) under these Acts, except those declared exempt in the preceding clause, must be on an 8-anna stamp.

Appeals.

5. Appeals to a Collector and a Commissioner under Section cli, *(see Article 10, Schedule B., Act X of 1862)*, and to a Collector under Section clv, must be on an 8-anna stamp.

Value of claims.

6. In all suits instituted under Act X of 1859, the value of the claim, calculated according to the Rules contained in the Note to Article 11, Schedule B, Act X of 1862, paras. (*a*), (*d*), and (*e*), must be stated at the foot of the claim.

Copies.

7. Copy of any judgment or its translation, or of any decree or order passed in any Revenue Court, in any case in which the value of the claim (stated as required by Clause 6) does not amount to fifty Rupees, if taken out of the Court making the same, is not chargeable with stamp duty; if taken out of any other Court, it is chargeable with 8 annas stamp duty. Copy of a *judgment* or its translation, or of an *order, not being a decree*, in any suit in which the value of the claim amounts to fifty Rupees or more, is chargeable with 8 annas; and a copy of a *decree* in such a suit is chargeable with one rupee stamp duty. (*See Articles 4 and 5, Schedule B, Act X of 1862.*)

Security Bonds,

8. Security bonds in cases under Act X of 1859, taken under the provisions of Sections li and cxxvii, must be on stamp paper of the value of 8 annas. *(See Article 2, Schedule B., Regulation X of 1862.)*

Section II.—Authorized Agents.

Agent with personal knowledge is not a mukhtar.

It is important to distinguish clearly between the "authorized agent who has personal knowledge of the facts of the case," or "is accompanied by a person who has such personal knowledge," (vide Sections xxxv and xliii, Act X of 1859), and the "authorized agent *or Mukhtar*" employed, under Section lxxi, "to conduct a case."

Mukhtar requires power of attorney.

2. The "authorized agent or Mukhtar" of Section lxxi, can only be employed under a special power of attorney, (*see Chapter XI, XIII*, 8), and his appointment, in no respect excuses the presence of his principal.

The agent requires none.

3. The "authorized agent" of Sections xxxv and xliii is, in the opinion of the Board of Revenue, identical, ordinarily, with the "Naib," "Gomashta," &c., of Section lxiv. He need not be enrolled under Act XX of 1865, and requires *no power of attorney* to enable him to appear; and he has the prerogative of so representing his principal that the principal can only be summoned in person, under the special circumstances stated in Section xliii or Section lxiv.

Absent plaintiff must be represented by agent.

4. Either the plaintiff himself, or an authorized agent appointed under Section xxxv, or again, the defendant himself, or an authorized agent appointed under Section xliii, *must* appear in every case.

Mukhtar will not suffice.

5. The appointment of a Mukhtar, under Section lxxi, in no way relieves his principal of the obligation of either appearing himself, or being represented by an authorized agent under Section xxxv, or Section xliii, accordingly as he is plaintiff or defendant.

Agent need not, himself, have personal knowledge.

6. A comparison of Section xxxv with Section xliii makes it clear, in the Board's opinion, that the legal position of the "authorized agents" of those Sections is the same, whether they have, themselves, personal knowledge, or only bring some subordinate with them who has.

Section III.—The Judgment and Decree.

Distinction between the two.

1. The *judgment* and the *decree* in a case under the Rent Laws are separate documents. Section xv, Act VI of 1862, B. C., contains directions for recording the *judgment*. In preparing a *decree*, the provisions of Section clxxxix, Act VIII of 1859, should be applied, as far as they are applicable.

Law as to translations, or copies.

2. The *decree* must be written in the language in ordinary use in the Court. Neither Section clxxxv nor Section cxcviii of Act VIII of 1859 is binding upon Collectors trying cases under the Rent Laws; so that the *law* does not make it necessary that their judgments should be translated into the language in ordinary use in the Court, or that certified copies thereof should be furnished to the parties or the pleaders.

Enlarging order of Government as to copies. To Board of Revenue, No. 1242T, dated 11th September, 1865.

3. The Government have, however, been pleased to direct that the Revenue Courts, in cases under the Rent Laws, shall act as if Section cxcviii, Act VIII of 1859, was applicable to them. A single certified copy, therefore, both of the decree and of the judgment, is to be furnished to each of the parties to any proceedings in these Courts, or their Agents or Mukhtars, on application to the Court, and on the production of the necessary stamps, where stamps are required by any law for the time being in force.

And as to translations.

4. The Government have, also, resolved that, whenever the judgment in any of these Courts is written in any other language than that which is in ordinary use in the Court, a certified translation thereof into the language in ordinary use in the Court, shall be furnished to any of the parties, upon payment of such fees as the Board of Revenue may from time to time direct.

Fee to be levied.

5. For the present, the Board have fixed this fee at a maximum of 2 Rupees for a 100 words. Within that sum, the Collector, with the sanction of the Commissioner, may fix, from time to time, at his own Court, and at the Sub-Divisional Courts of his District, any rate that he thinks fit. The fee can only be charged once for each judgment. If both, or all, the parties to the proceedings *unite* in applying for a translation, the charge for translation will be divided equally among them. If a judgment has been already translated, copying fees only are to be charged to any one requiring a copy.

Responsibility of officers.

6. The officer presiding in each Court is responsible for the correctness of the translation, and must make his own arrangements for getting the work done for the fees allowed, being careful only that if any officer of the Court is told off for the work, he is not permitted to do it in office hours. *Assistant or Deputy* Collectors must report their arrangements for the sanction of the Collector. The person appointed to make translations must keep an account in the form, *mutatis mutandis*, of Register No. 68.

Copying fees.

7. If more than one copy of either a decree, or of a judgment, or translation, is required by any party, he must pay copying fees at the rate prescribed in Chapter XIII, VI, 1.

Satisfaction of Decree.

8. Although Section cevi., Act VIII. of 1859, is not, by law, made applicable to the procedure of the Revenue Courts, the Board of Revenue are of opinion that those Courts should, since there is no provision upon the subject in the Rent Laws, act in the spirit of that procedure, until the High Court declare it to be wrong to do so. That is to say, a Revenue Court should, on the one hand, accept a payment made to it, in satisfaction of its decree, for transfer to the judgment creditor; and, on the other hand, should refuse to recognize any adjustment of a decree unless it is made through the Court, or be certified to the Court, by the judgment-creditor or his agent.

Decree to be promptly executed.

9. It is of the utmost importance that decrees should be promptly executed: and Collectors should frequently examine the Register of Executions of Decrees, No. 22, in order to ascertain that no avoidable delays are permitted in the Courts of the Deputy Collectors.

Section IV.—Civil Court Amíns.

The following (Clauses 1-10) is an adapted abstract of such of the existing Rules of the High Court for the employment of Civil Court Amíns in local investigations, and the levy of fees for their remuneration, as are applicable to their employment by the Revenue Courts—(*See also Act VIII of* 1856, *Section clxxx, Appendix* B.)

Adapted Rules.

2. The instructions given to an Amín for a local enquiry should be careful and precise. Such enquiries frequently prove fruitless, owing to the loose and imperfect instructions originally given to the Amín.

Instructions to be precise.

3. Before orders are issued for an enquiry by an Amín, the exact nature of the enquiry to be held; the means to which the Amín is to have recourse in making it; and the time it should occupy; must be carefully considered and recorded.

Particulars to be fixed.

4. It will not often be possible for the Revenue Courts to specify the date on which the Civil Court Amín will commence his proceedings. It will therefore be, ordinarily, the Amín's duty to notify the date. The Amín must not defer his proceedings on account of the absence of a party to whom notice has been given.

Fixing of date.

5. Litigants habitually attempt to impeach the genuineness of an Amín's returns and plans, by withholding the attestation of their own signature. An erroneous impression prevails, that to sign, is to ratify and accept. But it should be understood that the simple attestation of a plan does not preclude a party from objecting, thereafter, to the mode in which it has been prepared.

Attestations of plans.

6. The employment of Amíns is regulated by Act XII of 1856. Especial attention is directed to Section vii. of the Act. The daily rate chargeable for the employment of an Amín is fixed at three Rupees.

Fees to be paid.

7. The whole charge for the number of days that it is estimated that the enquiry will occupy, must be levied before the order for the enquiry is issued. As soon as he has completed the enquiry, the Amín will specially report the number of days that it has occupied; and, if the amount paid into Court be found to exceed the amount to be credited to Government for this number of days, the excess must be at once refunded to the depositor.

How to be calculated.

8. In addition to the fixed daily rate of three Rupees, (which is to be credited to Government as "Civil Court Amíns' fees") the party at whose instance, or for whose benefit, an Amín is deputed, must pay into Court the following charges :—

Costs.

(*a.*) The Amín's travelling expenses, which are to be calculated with reference to the distance to be travelled, and the means by which the journey can be performed.

(*b.*) The remuneration of peons, when it is necessary that such officers should accompany the Amín.

(*c.*) The cost of the postage of the Amín's Reports, &c.

9. These items are, however, to be charged only where absolutely necessary. From the amount deposited on account of these several items, the actual sums expended on these accounts by the Amín will be reimbursed to him, and added to the costs of suits, the balance being returned to the depositor.

Their appropriation.

10. The Amín is to be supplied with stationery from the Court by orders of which he is employed. The Civil Courts keep these officers supplied with needful instruments for survey, &c.

Stationery.

11. The employment of Civil Court Amíns in local enquiries under Section lxxii, Act X, 1859, should be very sparingly resorted to. Such enquiries cannot often be necessary for the decision of suits under Act X of 1859, at all; and, when an enquiry is necessary, it by no means follows that a Civil Court Amín should be employed upon it. When an Officer subordinate to the Collector is employed upon such an enquiry, only his actual travelling and other expenses, with such remuneration as may seem reasonable, not exceeding 3 Rupees a day, should be charged to the parties.

Amín to be rarely employed.

12. Civil Court Amíns have no claim to extra remuneration for the performance of any duties that may be required of them in cases under Act X of 1859; but they will be allowed the travelling expenses which they have *bonâ fide* incurred, when deputed on such duties, and these expenses will be disbursed by the Collectors, as a contingent charge.

Entitled to travelling allowances only.

13. The following are the periodical reports and statements which the Board, under the authority vested in them by Section cxxxvi of Act X of 1859, direct that the Civil Court Amíns or other Officers authorized to sell distrained property shall submit to the Collector.

Returns.

No 1.

Quarterly Statement of business in the Office of the for the Quarter of 1864-65.

Description of Cases.	Remaining from last quarter	Instituted during the quarter.	Total	Number compromised or withdrawn or struck off in default of the parties.	Number terminated in sale.	Number in which security was given to Collector	Total.	Remaining.	Remarks.
Applications for sale of distrained property	5	5	10	2	1	1	4	6	

No 2.

Diary in the Office of the for the month of

No.	3rd January, 1865.

No. 3.

Cash Account in the Office of the for the month of

Receipts	Disbursements.

11. The employment of Civil Court Amíns in local enquiries under Section lxxiii., Act X, 1859, should be very sparingly resorted to. Such enquiries cannot often be necessary for the decision of suits under Act X of 1859, at all; and, when an enquiry is necessary, it by no means follows that a Civil Court Amín should be employed upon it. When an Officer subordinate to the Collector is employed upon such an enquiry, only his actual travelling and other expenses, with such remuneration as may seem reasonable, not exceeding 3 Rupees a day, should be charged to the parties.

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No 2.

Diary in the Office of the for the month of

No.	3rd January, 1865.

No. 3.

Cash Account in the Office of the for the month of

Receipts.	Disbursements.

Section V.—Sales, in Execution, and after Distraint.

Fees to be levied.

1. The provisions of Section cxxxii, Act X of 1859, which relate primarily to the sale of distrained property, are, by Section xcix of the Act, made applicable to sales of moveable property, in execution of decrees. Section cx, again, extends Section xcix to cases of sale of houses or other buildings. The deduction of one anna in the rupee therefore, on account of the costs of the sale, and the credit of this amount to Government, which is prescribed by Section cxxxii, should be carried out in cases of sale of houses and buildings, as well as of moveable property, in execution of decree. This will, of course, not apply to sales of estates and under-tenures.

Nazir to be employed.

2. The Nazir, or, in Courts where there is no officer bearing that title, the officer who performs the duties of Nazir, is, ordinarily, to be employed to hold sales in execution of decrees of moveable property under Section xcix, and of houses or other buildings under Section cx. The employment of the Civil Court Amíns to hold such sales is not, absolutely, prohibited: but they should be so employed as rarely as possible, and only in exceptionally important cases.

Not a Peon.

3. The Nazir may depute his Naib or a Bakshi upon these duties, and to make local enquiries. But mere peons should never be employed either to hold sales or make enquiries.

Expenses to be allowed.

4. When the Nazir is employed to sell property in execution of a decree, he should be allowed a sum sufficient to cover actual travelling and other expenses incurred; and, in special cases, the Collector may, with the sanction of the Commissioner, allow him such further remuneration as may seem proper. These charges will be disbursed by Collectors, under the rules applicable to contingent expenses, the one anna in the rupee, leviable under Section cxxxii of the Act, on account of the costs of sale, being credited to Government as "Receipts under Section 132, Act X of 1859." No charge, besides the one anna in the rupee on account of costs, can, in any case, be imposed on the parties.

Section VI.—Aid in Distraint.

Application to be personal.

1. Applications for aid under Section cxix, Act X of 1859, should be made by the distrainor himself; and an agent should be required to show his power of attorney, before being recognized in that capacity.

A single peon to be sent.

2. To support a distrainor legally, a Collector is to depute a single peon. This officer, as the representative of the constituted authorities, will give sanction, by his presence, to all legal proceedings on the part of a distrainor; and it will be his duty to discountenance, and to report, at once, to the Collector, any illegality that may come to his notice. He is not empowered to use physical force, or to do anything which the distrainor himself is not entitled to do. Under no circumstances is a Collector justified in sending to the assistance of a distrainor, a number of peons, whose only use can be to intimidate the ryots by an illegal display of physical force, and who become mere instruments of oppression in the distrainor's hands, and naturally obey his orders, whether they be legal or not.

Assistance confined to *distraint.*

3. The Collector is not on any account to depute an officer to assist in the execution of a decree as if it were a distraint; a decree can be enforced only by regular process of law. A Collector though not bound, when applied to for assistance under Section cxix, to enquire, judicially, into the legality of the distraint, should refuse assistance when the purpose for which it is sought is patently illegal.

Resistance of Distraint.

1. The proceedings provided by Section cxlv, Act X of 1859, in case of resistance of distraint, can only be adopted *upon complaint being made within fifteen days of the date of the resistance.* District Officers are to be careful to take no steps in such cases upon the report of the officer deputed to support a distrainor under Section cxix, or unless complaint is mad according to law.

Section VII.—Supervision of Subordinate Authorities.

By Commissioners.

1. Commissioners will see that the proceedings of the Lower Courts are in all respects regular, whenever cases under the Act come under review, either in appeal or incidentally; and, in their annual circuits, this should be a point for special enquiry.

By Collectors.

2. Every Collector is to exercise the like supervision over his Deputies, and to report to the Commissioner, annually, *(Return No. XXVII.)* on or before the 31st March, that he has, personally, satisfied himself that each Deputy Collector subordinate to him has faithfully complied with the requirements of the law in the hearing and decision of these suits, and especially in the taking of evidence.

Result of appeals.

3. By Circular Order No. 14, dated 7th July, 1865, the High Court have instructed the Judges to communicate their judgments passed in appeal from the judgments of Deputy Collectors, to those officers, *through the Collector.* In case this is not done, the Collector should remind the Judge of those orders. In his Return No. XXVII, he should mention the character of the comments made by the Judge on each Deputy Collector's proceedings, during the year, and the result of the appellate revision of the Deputy's proceedings, keeping, to this end, a Register (No. 39) of the appeals of each of his Deputies.

To be reported.

4. The Commissioner should forward to the Board any report that is specially favorable, or specially unfavorable.

Section VIII.—Appeals.

Appeals.

1. The following is the construction which the Board of Revenue put upon the provisions of Section cli, Act X of 1859, in regard to appeals from, or the revision of, "*orders passed in the course of suits, and relating to the trial thereof,*" and "*orders passed after decree and relating to the execution thereof.*"

Interlocutory orders.

2. From the analogy of Section cccIxiii of Act VIII of 1859, it is plain that there is absolutely no appeal from, and no power of revision of, an "ORDER PASSED IN THE COURSE OF A SUIT AND RELATING TO THE TRIAL THEREOF;" but, "if the decree be appealed against, any error, defects, or irregularity in any such order, affecting the merits of the case, or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal."

Specific performance. Sections lxxx, lxxxiii.

3. There is no appeal from, and no power of revision of, "ORDERS PASSED AFTER DECREE, AND RELATING TO THE EXECUTION THEREOF," by COMPELLING SPECIFIC PERFORMANCE (Sections lxxx-lxxxiii). The requirements of the law in regard to this class of executions are specific and definite; and there is no apparent room for irregularity in carrying them out. Until they are carried out, the decree is unexecuted; and it is competent to the superior Executive Authorities to point out, under such circumstances, to a Lower Court the requirements of the law, and remind it of the duty imposed upon it. Such an interference by higher authority would, probably, meet with immediate attention. If it did not, it would be the duty of the higher authority to proceed to ulterior measures.

4. There is no appeal from, or power of revision of, "orders passed after decree and relating to the execution thereof," by IMPRISONMENT OF THE PERSON; though, no doubt, an action would lie, in the Civil Court, for damages, against any officer guilty of irregularity in this class of executions. It behoves the superior Executive Authorities to supervise, very carefully, the proceedings of the Lower Courts in this matter, reproving and, if necessary, reporting for further orders any serious irregularity.

Imprisonment of the person. Sections lxxxiv and xciii.

5. If a decree is executed by SALE OF MOVEABLE PROPERTY (Sections xcviii, &c.) there is no appeal from, or power of revision of, any order passed in the course of the execution; but an action lies in the Civil Court for the recovery of any damage sustained by any person by reason of any irregularity in publishing or conducting the sale (Section civ).

Sale of moveable property. Sections xcviii, &c.

6. UNDER-TENURES are SOLD, in execution of decree, FOR THEIR OWN ARREARS under Act VIII of 1865, B. C., which (Section xiii) provides for an appeal, on the ground of irrelevancy of the law, or of irregularity of procedure.

Sale of under-tenure for its own arrears. Section cv.

7. No appeal from, or power of revision of, any "order passed after decree, and relating to the execution thereof," by the SALE OF HOUSES OR BUILDINGS, is provided by the law as it stands. It is very important, therefore, that the Lower Courts should be extremely careful in their proceedings as to such executions, and the higher Revenue Authorities must, as in the case referred to in Clause 4 above, carefully supervise the proceedings of the Lower Courts.

Sale of houses or buildings. Section cx.

8. UNDER-TENURES ARE SOLD, in execution of decree, FOR ARREARS NOT DUE IN RESPECT THEREOF, under Section ccxlviii, &c., Act VIII of 1859. An appeal, therefore, lies, under certain circumstances, as described in Section ccxlvii of that Act, to correct irregularities in such sales. This appeal should, in the opinion of the Board of Revenue, be heard by Collectors from the orders of Deputy Collectors, and by Commissioners from the orders of Collectors.

Sale of under-tenures for arrears not accrued upon them. Section cx.

9. ESTATES, OR SHARES OF ESTATES, are SOLD, in execution of decree, under Act XI of 1859. The sale can only be held after special notification under Section v of that Act. The date fixed in the notification should be the latest date for payment of such demands in the District, as determined by the Board of Revenue under Section iii (*See Chapter XIX, Section I*). An appeal lies to the Commissioner under Section 25, Act XI of 1859, in case of any irregularities, &c., in such a sale.

Sale of Estates or shares of Estates. Section cx.

10. Special provision is made by the Act (*Sections ciii, cvii, and cxi*) for the adjudication of CLAIMS TO ATTACHED PROPERTY, OF ALL KINDS, and for a suit in the Civil Courts to question the decision of the Revenue Courts in regard to such claims.

Claims to attached property. Sections ciii, cvii, and cxi.

11. There is NO APPEAL from, and NO POWER OF REVISION of, any "ORDER PASSED AFTER DECREE and RELATING TO THE EXECUTION THEREOF," UPON THE MERITS, except when a claim has been adjudicated.

No appeal upon the merits, except upon a claim.

12. Unless an appeal is made to the proper authority, there is no power of interference by the superior authorities. The Board of Revenue or the Commissioner can, only, under clii, "call for a case, and pass orders upon it," *when an order has been passed* IN APPEAL, by the Commissioner or the Collector respectively.

Board and Commissioners' power. Section clii.

13. Appeals should always be tried by the Collector himself. Collectors are never to refer appeals, for trial, to a Deputy Collector without the special permission of the Commissioner previously obtained. Commissioners are always to report to the Board of Revenue the circumstances under which they may think it necessary to authorize a Collector to delegate this

Collectors not to refer appeals for trial by a Deputy Collector, without Commissioner's special sanction.

important duty to any of his subordinates. They should give the authority, only in case the pressure of business is such as to make it absolutely necessary.

Section IX.—Record of Tenures.

1. By Section X, Act VI of 1862, B. C., a Collector is required, under certain circumstances, "on the *special application* of a pro-
When to be undertaken. "prietor, or other person entitled to receive the rents of an "estate or tenure, to ascertain, determine, and record, the "tenures and under-tenures comprised in such estate or tenure, or any part thereof, "the rate of rent payable in respect of such lands, and the persons by whom, re-"spectively, the rents are payable."

2. In the opinion of the Board of Revenue, the law thus quoted does not
Limits of power. authorize a Collector to *alter* the rent of a single tenant of such lands. He has only power to ascertain, determine, and record the rent, at the time of his enquiry, actually payable by each tenant on the lands,—to prepare, in fact, a rent-roll. The "proprietor or other person" as described in the quotation, must proceed according to the forms of the law, to that end provided, before the rent of a single tenant can be enhanced.

3. Collectors are to be careful to act upon this view of the law, until it be,
To be observed. by competent authority, declared to be erroneous, and not to take upon themselves, under cover of the law, to re-settle lands and estates, to do which the law quoted, in the opinion of the Board, gives them no power whatever.

Section X.—Patni Sales.

1. One petition only need be presented for the sale of any, or all, of the tenures
One petition for all tenures in one estate. described in Section viii, Clause 1, Regulation VIII of 1819, contained in one estate.

2. If the 1st of Bysakh, or the 1st of Kartik, fall on a Sunday, or other close
Provision for Holiday. holiday, the petitions prescribed in Clauses 2 and 3 of Section viii, of Regulation VIII of 1819, must be presented on the first succeeding day on which the office is open.

3. A defaulting Patnidar, who has not contested the arrear summarily, under
Procedure. the provisions of Section xiv, Regulation VIII of 1819, must, in the event of a petition being presented at the end of the year, pay the amount claimed, before the day of sale; and, in like manner, in the event of a petition being presented in the middle of the year, he must pay the advertised balance, or the requisite proportion as laid down in Clause 8, Section viii before the day of sale. Upon the date of sale, if there is any balance outstanding, and the zemindar insists upon a sale, the Collector must sell. A Patnidar, who has contested the award summarily as above, is entitled to lodge the amount of the arrear demanded after the lot has been put up. Talukdars of the second degree, on the contrary, who wish to stay the sale under Clause 2, Section ciii by paying the amount of balance that may be declared due by the person attending on the part of the zemindar, must do so before the lot has been called up. They, of course, may lodge money antecedently, as allowed by the same Clause.

Section XI.—Miscellaneous.

1. If a Collector, during his absence from the station on duty, leaves a Cove-
Delegation of duties. nanted Deputy Collector, or a Covenanted Assistant with the powers of a Deputy Collector, in charge of the current duties of the office, it is competent to him, by a proceeding, to delegate to the officer so left in charge, the duty of deciding any cases that may be instituted under the provisions of these Acts, or of distributing such cases amongst the officers authorized to decide the same.

2. Suits and cases under Acts X of 1859 and VI of 1862, B. C., may be heard and decided at all times, when the office of a Collector is open for the dispatch of general business. But it is incumbent on the Revenue Authorities to exercise a sound discretion in passing judgment, in the absence of either of the parties in a case, at seasons when the Civil Courts are closed, and the transaction of civil business is, in a great measure, suspended. This caution does not apply to the issue of the various processes necessary in the course of a suit, in preparation for its final hearing, nor of processes in execution of decree. The issue and service of such processes should not be interrupted in any way, in consequence of the closure of the Civil Courts.

Suits may be heard at any time, with discretion.

3. Attention is directed to Section xvii, read with Sections xlviii and l of the Indian Registration Act, XX of 1866.

The Registration Law.

4. Officers trying rent suits should specially bear in mind that no *unregistered* lease of immoveable property, for a period exceeding one year, that bears a later date than the 31st December, 1864, and no unregistered counterpart or kabulyat, for a period exceeding one year, which bears a later date than 30th April, 1866, may be received by them in evidence.

Admission of documents.

5. For the duties of the Revenue Courts, in regard to the notification of the effect of the orders to their Registration Officers, see Chapter XII, Section v.

Notification of orders.

6. The penal provisions of Section ii, Act VI of 1862, B. C., should not be applied indiscriminately, or otherwise, than in strict accordance with the law, as expounded by the High Court. Whenever the Returns show that these penalties have been inflicted in any large proportion of cases, a careful explanation of the cause is to be furnished to the Commissioner, for the information of the Board of Revenue.

Damages.

7. Security bonds taken under Section li or cxxvii must be executed or acknowledged before the Collector or other officer, before whom the case is. The acknowledgment of the party executing the bond should be noted by the deciding officer on the bond. *Property* need not be pledged by either party; the security of a person of substance is what is required; but, when objection to the sufficiency of the security is made by the opposite party, the authority before whom the bond is brought should make enquiries before accepting it. The *registration* of security bonds in suits under Act X of 1859 is not necessary.

Of security bonds.

8. In the Appendix will be found Forms (II.) and (I.) for the Proclamation for the attendance of the Defendant (Section lii), and for the Summons of Witnesses (Section lvi), for which no forms are given in the Schedule to Act X.

Forms of processes not given in the Act.

9. The rules for the service of processes will be found in Chapter XII, Section vi.

Service of process.

10. The law which regulates the position and qualification of Revenue Agents is Act XX of 1865. But that law does not apply to the Agents with personal knowledge of Act X of 1859.

The law as to Revenue Agents.

11. The rules prepared by the Board of Revenue, under Section xxiii of that Act for defining the qualification required for the certificate of a Revenue Agent, and the Table of Fees fixed under Section xxxvii, will be found in Chapter XII, Section iv.

Rules for their qualification.

12. Under-tenures in estates under the immediate management of a Collector, whether they be the property of Government or of individuals, including Wards of Court, are saleable for arrears of rent under Section xxv, Regulation VII of 1799. (*See Appendix A*) A previous decree is not necessary to a sale under that Section.

Sale of under-tenures in estates managed by Collector.

GENERAL APPENDIX.

APPENDIX A.

FORM II.

FORM OF PROCLAMATION FOR THE ATTENDANCE OF THE DEFENDANT.—*See Section lii.*

No. (*of suit*) dated

In the Court of

A. B., Plaintiff (*Name, description, and address of Plaintiff.*)

C. D., Defendant (*Name, description, and address of Defendant.*)

WHEREAS the said A. B. has brought a claim against you in this Court for (*here specify particulars of claim as given in the statement*); and whereas a warrant was duly issued for your arrest; and whereas it appears from the return of (*the Nazir or the Deputy Sheriff of Calcutta*), that, after diligent search, you are not to be found, and that the said warrant could not, therefore, be executed upon you according to the exigence thereof, PROCLAMATION is therefore hereby made that the Court will upon the day of (*here enter a date sufficiently distant to make it certain that it will be at least ten days from the date of the publication of the notice at the residence of a defendant*) proceed to hear the said suit, and, in case of your non-attendance, will pass judgment upon the documents and proofs that may be exhibited by the plaintiff, *ex-parte*.

Dated this day of 186

FORM OF SUMMONS TO WITNESS. *See Section lxvi.*

No. (*of suit*) dated

In the Court of

A. B, Plaintiff (*Name, description, and address of Plaintiff.*)

C. D., Defendant (*Name, description, and address of Defendant.*)

WHEREAS your attendance is required to give evidence on behalf of the Plaintiff (*or Defendant*) in the above suit, you are hereby required personally to appear before this Court on the day of 186 for that purpose.

Dated this day of 186

APPENDIX (A)—(*Vide Section xxix, Act X of* 1859.)

THE SPECIAL LAW FOR THE RECOVERY OF ARREARS OF REVENUE FROM FARMERS OF GOVERNMENT AND WARDS' ESTATES, &C, AND OF ARREARS OF RENT IN ESTATES MANAGED DIRECTLY BY THE COLLECTOR.

REGULATION VII OF 1799, *Section* xxiii. *Second.* In the event of any arrear of revenue, ... being undischarged on the first day of the month succeeding that for which the arrear may be due, the Collector, if the revenue be payable into his treasury, or if not, the tehsildar or other public officer to whom the same may be payable, ... if the arrear be due from a farmer, shall proceed without delay . . . to . . arrest his person (as well as the person of his surety, if he have given security), in the mode prescribed by Sections v and vi of Regulation XIV, 1793. . . . Instead, however, of carrying the defaulter forthwith to the gaol of the Dewanny Adawlut, as directed in Section v of Regulation XIV, 1793, the Collector, if the defaulter show any disposition to adjust and satisfy the demand upon him, is at liberty to keep him in the custody of peons during a period not exceeding ten days, from the date of his arrival at the Collector's station; at the expiration of which period, if the arrear be not paid, or satisfaction given for the immediate payment thereof, so as to induce the Collector to release the defaulter, he is to be brought before the Judge of the Dewanny Adawlut, and confined in the gaol of that Court as directed in the Section above-mentioned. This qualification of the rule contained in that Section is to be considered applicable to all cases under the original rule, or to which it may be extended by the present or any other Regulation; but it is not meant to restrict the Collectors from observing the original rule in any instances where the defaulter may show no disposition to adjust and satisfy the demand upon him; or where, for any other reason, it may appear to them objectionable to suspend the confinement of the defaulter or his surety.

. . . . . .

Third. . . . The . . . farmers are forbidden to demand or receive, and the ryots and other under-tenants are forbidden to pay, any part of the rents receivable by the former and payable by

the latter, before the stipulated or usual period of payment, according to the kistbundy or other engagement, or established local usage; and no person hereafter making anticipated payments against this prohibition, or producing receipts for such, whether collusive or otherwise, shall be entitled to credit for the amount from the officers of Government who may attach the lands or farm, or from the landholder or farmer making the attachment, if it be made for arrears due from an under-tenant under the provisions contained in this Regulation.

. . . . . .

Sixth. If any arrear remain due from a farmer of land at the close of the current year, any land or property belonging to the defaulter, or his surety, is to be brought to public sale,* as soon as possible, after the close of the year, according to the rules prescribed for such sales; and, as provided in Section xxiii of Regulation XIV, 1793, it will be at the option of the Governor General in Council either to cancel the lease of the defaulter from the commencement of the ensuing year, or to compel the defaulter or his surety to perform the conditions of the lease until the term of it shall expire. If the Governor General in Council shall annul the lease, the defaulter, after making good the arrear due from him to Government, is to be at liberty to prosecute the dependent talookdars, under-farmers, or ryots, included in his farm, for any arrears of rent due to him on account of the period during which his lease remained in force, as provided in the latter part of the Section above-mentioned, the preceding part of which is superseded by the rules now enacted. The provisions contained in Section xxiv of Regulation XIV, 1793, respecting the attachment of the landed property of sureties for farmers of land, . . . are, moreover, still to be considered in full force (under the alterations made by this Regulation with respect to the attachment and sale), when the persons for whom they are bound may be confined, or their lands and farms attached under this Regulation; and the above rule is hereby extended to landed property of defaulting farmers which can be attached, and which in such case is to be brought under attachment at the same time that their farms are attached, under the present Regulation, subject to the same provisions for withdrawing the attachment on payment of the arrear.

See Cl. 2, Sec. li, Reg. XI., 1822.

Seventh. The discretion given to the Collectors by Section viii of Regulation XIV, 1793, to suspend the exercise of the powers vested in them by that Regulation, in cases of drought, inundation, or other calamity of season, or cause of failure not originating in the neglect, mismanagement, or misconduct of the defaulter, is to be considered equally applicable to similar cases under the present Regulation; and the Collector, in such cases, is to suspend the exercise of the powers now vested in him; but, as before required, he is immediately to report the circumstances to the Board of Revenue, with his reasons for not proceeding against the defaulter as directed, and is to be guided by their instructions. The Board of Revenue may suspend enforcement of the current kists, as well as of the interest due thereupon, in such cases; but are not to grant any ultimate remission of the amount demandable on the permanent assessment without the sanction of the Governor General in Council, as already directed in Section lxiii of Regulation II, 1793.

See Sec. xviii, Act XI, 1859.

XXIV. The provisions contained in Sections xv, xvi, xvii, xviii, xix, xx, and xxi of Regulation XIV, 1793, for cases of disobedience or resistance to the processes against defaulting proprietors or farmers and their sureties, authorized by that Regulation, are declared equally applicable to cases of disobedience or resistance to the processes authorized by the preceding sections of this Regulation. . . . . .

XXV. When lands . . . . become subject to a khas collection on the part of Government under any Regulation authorizing the same, or by any means come under the immediate management of the officers of Government, so that the rents are collected by them from the ryots, jotedars, dependent talookdars, under-farmers, or other descriptions of under-tenants, the Collector . . . . . is authorized . . . . to proceed against defaulting under-renters, of whatever denomination, from whom arrears of rent may be due, and their sureties, in the same manner as he is authorized by Section xxiii of this Regulation to proceed against sudder farmers paying revenue immediately to Government, and their sureties, if he shall consider this mode of procedure more likely to be effectual in causing payment of the arrear due from them: and in such cases he is authorized to issue the process directed in Section v of Regulation XIV, 1793, on the report of the tehsildar, or other officer employed to make the collections, as in cases of arrears due from proprietors or sudder farmers whose revenue may be made payable to a tehsildar; or the tehsildar, or other collecting officer may, in particular cases, where he may have reason to apprehend the elopement of the defaulter or his surety, himself arrest and convey him to the Collector, under the provisions contained in the second clause of Section xxiii of this Regulation. In all such cases, however, the Collector, before he delivers over the parties to the Dewanny Adawlut, is to satisfy himself that the arrear stated by the tehsildar or other mofussil officer is justly due; and he is at liberty to keep the alleged defaulter under mofussil peons during the inquiry that may be necessary for this purpose, although the period should exceed the ten days limited by the above section; but all such inquiries are to be brought to a conclusion with the least possible delay.

XXVI. The provisions in the preceding section are meant to include the estates of disqualified landholders under the management of serberakars appointed by the Court of Wards, under Section viii of Regulation X, 1793.

See Section x, Act I, 1845.

* Sales under this Clause and under Sec. xxv. are to be made by Collectors or their Assistants or Deputies.—See Act VIII., 1865, B. C.

APPENDIX B

THE PORTIONS OF THE CODE OF CIVIL PROCEDURE *(Act VIII of* 1859) DECLARED APPLICABLE TO SUITS UNDER ACTS X OF 1859, AND VI OF 1862, B C

ATTACHMENTS —(*Vide Section xvi, Act VI of* 1862, *B C*)

ACT VIII OF 1859, *Section* 81 If the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of his property or any part thereof, or to remove any such property from the jurisdiction of the Court where the suit is pending, the plaintiff may apply to the Court, either at the time of the institution of the suit, or at any time thereafter, until final judgment, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, and on his failing to give such security, to direct that any property, moveable or immoveable, belonging to the defendant, shall be attached until the further order of the Court

In what cases plaintiff may apply before judgment for security from defendant to fulfil decree and in default, for an attachment of defendant's property

82 The application shall contain a specification of the property required to be attached, and the estimated value of each article or item thereof, and the plaintiff shall at the time of making the application declare the defendant is about to dispose of or remove his property with such intent as aforesaid.

Application how to be made

83 If the Court, after examining the applicant and making such further investigation as it may consider necessary, shall be satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of the decree, it shall be lawful for the Court to issue a warrant to the proper Officer, commanding him to call upon the defendant, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to fulfil the decree, or to appear and show cause why he should not furnish security The Court may also in the warrant direct the attachment, until further order, of the whole or any portion of the property specified in the application

Form of warrant to be issued

84 If the defendant fail to show such cause or to furnish the required security within the time fixed by the Court, the Court may direct that the property specified in the application, if not already attached, or such portion thereof as shall be sufficient to fulfil the decree, shall be attached until further order If the defendant show such cause, or furnish the required security, and the property specified in the application, or any portion of it, shall have been attached, the Court shall order the attachment to be withdrawn

If cause be not shown or security be not furnished, property may be attached

Withdrawal of attachment

85 The attachment shall be made according to the nature of the property to be attached, in the manner hereinafter prescribed for the attachment of property in execution of a decree for money Any order for the attachment of property under the preceding Section shall be open to appeal by the defendant

How the attachment is to be made

Appeal

86 In the event of any claim being preferred to the property attached before judgment, such claim shall be investigated in the manner hereinafter prescribed for the investigation of claims to property attached in execution of a decree for money

Claims to property attached before judgment how to be investigated

87 In all cases of attachment before judgment, the Court which passed the order for the attachment, shall, at any time, remove the same, on the defendant furnishing security as above required, together with security for the costs of the attachment

Attachment may be removed when security is furnished

88 If it shall appear to the Court that the attachment was applied for on insufficient grounds, or if the suit of the plaintiff is dismissed, or judgment is given against him by default or otherwise, and it shall appear to the Court that there was no probable ground for instituting the suit, the Court may (on the application of the defendant) award against the plaintiff in its decree such amount, not exceeding the sum of one thousand Rupees, as it may deem a reasonable compensation to the defendant for the expense or injury occasioned to him by the attachment of his property Provided that the Court shall not award a larger amount of compensation under this Section than it is competent to such Court to decree in an action for damages An award of compensation under this Section shall bar any suit for damages in respect of such attachment

Compensation for attachment applied for on insufficient grounds &c

Proviso

89 Attachments before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree

Attachment not to affect the rights of persons not parties to the suit or bar the execution of decrees

Court may stay the sale of property already under attachment, when execution of a decree fraudulently obtained is applied for.

90. If it shall appear to the Court by whose order the property may have been attached before judgment, that there is reasonable ground for supposing that the decree, in satisfaction of which the sale of the property is applied for, was obtained by fraud or other improper means, the Court may refuse to allow the property to be sold in execution, if the decree be a decree of that Court; or if it be a decree of another Court, may stay the proceedings for a reasonable time, to enable the plaintiff in the pending suit to adopt proceedings to set aside the decree.

. . . . . .

WITNESSES.—(*Vide Section lxvii.*)

Application for summons.

149. The parties or their pleaders may, at any time after the issue of the summons to the defendant, if the summons be for the final disposal of the suit, or, after the issues have been recorded, if the summons to the defendant be for the settlement of issues only, obtain, on application to the Court, summonses to witnesses or other persons to attend either to give evidence or to produce documents, and in any such summons the names of any number of persons may be inserted.

No stamp duty on application for summons.

150. No stamp duty shall be leviable in respect of any application for the summons of a witness or other person to attend either to give evidence or to produce a document, anything contained in any Regulation or Act notwithstanding.

Expenses of witnesses to be paid before issue of summons.

151. The person applying for a summons shall pay into Court such a sum of money as shall appear to the Court to be reasonable, to defray the travelling and other expenses of each witness or other person mentioned in the summons, in passing to and from the Court in which he may be required to attend, and for one day's attendance. If the Court be a subordinate Court, regard shall be had

Scale of expenses.

in fixing the scale of such expenses, to the rules (if any) established by the Court to which such Court shall be immediately subordinate.

Tender of expenses to witness.

The sum so paid into Court shall be tendered to the witness or other person at the time of serving the summons, if it can be served personally. If it shall appear

If sum be not sufficient.

to the Court that the sum paid into Court on account of the travelling and other expenses of the witness or other person in passing to and from the Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the witness or other person as may appear to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the goods of the person ordered to pay the same, or may discharge the witness without requiring him to give evidence. If it shall be necessary to detain the witness or other person

Expenses if witness is detained.

summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned, to pay into Court such sum as may be sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order the witness to be discharged without requiring him to give evidence.

Time, place, and purpose of attendance to be specified in summons.

152. Every summons for the attendance of a witness or other person shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the witness or other person may be called on to produce shall be described in the summons with convenient certainty

Summons to produce a document.

153. Any person, whether a party to a suit or not, may be summoned to produce a document, without being summoned to give evidence; and any person summoned, merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.

Service of Summons on a Witness.

How and when the summons shall be served.

154. Every summons to a witness or other person shall be served by exhibiting the original and delivering or tendering a copy; and the service shall, in all cases, be made a sufficient time before the time specified in the summons for the attendance of the witness or other person, to allow him a reasonable time for preparation, and for travelling to the place at which his attendance is required.

Service to be on the witness, or a male member of his family.

155. Whenever it may be practicable, the service of the summons shall be upon the person thereby required to attend; but when he cannot be found, the service may be made on any adult male member of his family residing with him.

When the summons cannot be served, it is to be returned to the Court.

156. When the person required to attend cannot be found, and there is no adult male member of his family on whom the summons can be served, the serving officer shall return the summons to the Court from whence it issued, with an endorsement thereon that he has been unable to serve it.

Time and manner of service to be endorsed on the summons

157 The serving Officer shall, in all cases in which the summons has been served, endorse on the original summons the time when, and the manner in which, it was served

How a summons on a witness who resides in another jurisdiction is to be served

158 If the person required to attend be resident within the jurisdiction of any other Court than that in which the suit is pending, the summons shall be transmitted by the Court in which the suit is pending to any Court having jurisdiction at the place where the witness resides by which it can be most conveniently served, and the Court to which the summons is sent shall, upon receipt thereof, deliver the same to the Nazir or other proper Officer of such Court, to be served in the manner above directed, and upon the return of the summons by the serving Officer, it shall be transmitted to the Court from whence it originally issued

When a witness absconds, his property may be attached

159 If the summons for the attendance of any person, either to give evidence or to produce a document cannot be served in either of the ways hereinbefore specified, the Court, on being certified thereof by the return of the serving Officer, and upon proof that the evidence of such witness or the production of the document is material, and that the witness or other person absconds or keeps out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring the attendance of such person to give evidence, or produce the document, at a time and place to be named therein, to be affixed in some conspicuous place upon his house or place of abode, and if such person shall not attend at the time and place named in such proclamation, the Court may, at the instance of the party on whose application the summons was issued, make an order for the attachment of the moveable and immoveable property of such person, to such amount as the Court shall deem reasonable not being in excess of the amount of the costs of attachment, and of any fine to which the person may be liable under the provisions of the following Section

How the Court is to proceed with the witness on his appearance

160 If, on the attachment of the property such witness or other person shall appear and satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein the Court shall direct that the property be released from attachment, and shall make such order in regard to the costs of the attachment as it shall deem fit If such witness or other person shall not appear, or, appearing, shall fail to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not such a notice of the proclamation as aforesaid, it shall be lawful for the Court to order the property attached or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of any fine which the Court may impose upon such witness or other person under the provisions of any law for the time being in force for the punishment of a witness who may abscond or keep out of the way in order to avoid the service of a summons If the witness or other person shall pay into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment

Of the Examination of Parties as Witnesses

A party to a suit appearing in person may be examined either in his own behalf or on behalf of any other party

161 When a party to a suit appears in person at any hearing of the suit, he may be examined as a witness either in his own behalf or on behalf of any other party to the suit, in the same way as if he were not a party thereto

Special application to be made for the examination of a party as a witness

162 If any party to a suit shall require to enforce the attendance of any other party thereto as a witness, he shall, by himself or his pleader, make a special application to the Court for an order requiring the attendance of the party, and shall show, to the satisfaction of the Court, sufficient grounds in support of such application, otherwise a summons shall not be issued

The Court may first issue a notice to show cause

163 The Court, if it think fit, may, before making such order, cause notice to be given to the party or his pleader, fixing a day for such party to show cause why he should not attend and give evidence, and may also, from time to time, if necessary, for good and sufficient reason, enlarge the time for such purpose

Court shall receive a written declaration in support of the cause shown

164 In support of the cause shown, the Court shall receive any declaration in writing of the party, on unstamped paper, if signed by him and verified in the manner hereinbefore provided for the verification of plaints, and delivered into the Court by himself or his pleader

If no sufficient cause be shown, summons to issue

165 If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court shall enlarge the time for that purpose, the Court shall issue its order requiring the party to attend and give evidence

Court may of its own accord at any time summon a witness

166 If the Court shall think it necessary for the ends of justice to examine any party to the suit, or to inspect any document in his possession or power, the Court may, of its own accord in any stage of the suit, cause such party to be summoned to attend as a witness, to give evidence or to produce such document, if in his possession or power, on a day to be appointed in the summons, and may examine such party as a witness in open Court, or may cause such party to be examined in such other manner as the Court may direct

Attendance of Witnesses and consequences of Non Attendance

Persons summoned to give evidence must attend

167 Any person who shall be summoned to appear and give evidence in a suit, shall be bound to attend at the time and place named in the summons for that purpose

Consequences of non attendance by a witness

168 If any person, on whom any summons to give evidence or produce a document shall have been served in either of the ways specified in Section 155, shall, without lawful excuse, fail to comply with the summons, the Court may order such person to be apprehended and brought before the Court. If such person abscond or keep out of the way, so that he cannot be apprehended or brought before the Court, his property shall be liable to attachment and sale in the manner and subject to the rules provided in Sections 159 and 160, with respect to a witness or other person on whom the service of a summons cannot be effected.

Consequences of refusal to give evidence

169 If any witness, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may commit such witness to close custody for such reasonable time as it may deem proper, unless he shall in the meantime consent to give his evidence, or to produce the document. If, after the expiration of such time, the witness shall persist in his refusal, the Court may proceed to deal with him according to the provisions of any law, for the time being in force, for the punishment of persons refusing to give evidence.

Consequences of non attendance or refusal of a party to the suit to give evidence

170 If any person, being a party to the suit, who shall be ordered to attend to give evidence or produce a document, shall, without lawful excuse, fail to comply with such order, or, attending or being present in Court, shall, without lawful excuse, refuse to give evidence, or to produce any document in his custody or possession named in such summons as aforesaid, upon being required by the Court so to do, the Court may either pass judgment against the party so failing or refusing, or make such other order in relation to the suit as the Court may deem proper in the circumstances of the case.

Any person present in Court may be called upon to give evidence, though not summoned

171 Any person present in Court, whether a party to the suit or not, may be called upon by the Court to give evidence and to produce any document, then and there, in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence or to produce such document, and shall be liable to be dealt with by the Court as a party or witness, as the case may be, would, under any of the preceding provisions, be liable to be dealt with for any refusal to obey the order of the Court

When and How Witnesses are to be Examined.

Witnesses to be examined at the hearing of the suit in open Court

172 On the day appointed for the hearing of the suit, or on some other day to which the hearing may be adjourned, the evidence of the witnesses in attendance shall be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. In cases in which an appeal lies to a higher tribunal, the evidence of each witness given upon such examination shall be taken down in writing, in the language in ordinary use in proceedings before the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties to the suit, or their pleaders, or such of them as may be in attendance, and shall, if necessary, be corrected and shall be signed by the Judge.

In what form evidence shall be taken in appealable cases

In what case a witness may require his deposition to be interpreted to him

If the evidence be taken down in a different language from that in which it has been given, and the witness does not understand the language in which it is taken down, the witness may require his deposition as taken down in writing to be interpreted to him in the language in which it was given.

When evidence may be taken in English

Where all the parties to the suit are present, and the pleaders of such as are absent consent to have such evidence as is given in English taken down in English, the Judge may so take it down in his own hand.

Objection made to questions

It shall be in the discretion of the Court to take down, or cause to be taken down, any particular question and answer, if there shall appear any special reason for so doing, or any party or his pleader shall require it. If any question put to a witness be objected to by either of the parties or their pleaders, and the Court shall allow the same to be put, the question and answer shall be taken down, and the objection, and the name of the party making it, shall be noticed in taking down the depositions, together with the decision of the Court upon the objection. The Court shall record such remarks as it may think material respecting the demeanor of the witness while under examination.

Memorandum of substance of the evidence to be made by Judge, as each witness is examined

In cases in which the evidence is not taken down in writing by the Judge himself, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall accompany the record.

In what form evidence shall be taken in cases not appealable.

In cases in which an appeal does not lie to a higher tribunal, it shall not be necessary to take down the depositions of the witnesses in writing at length, but the Judge, as the examination of each witness proceeds, shall make a

memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record

If Judge be unable to make a memorandum of the evidence reason of inability to be recorded

If the Judge shall be prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and in cases not appealable shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same, and such memorandum shall form part of the record

173 If a witness be about to leave the jurisdiction of the Court, or other good and sufficient cause can be shown, to the satisfaction of the Court, why his examination should be taken immediately, it shall be competent to the Court upon the application of either party or of the witness, at any time after the institution of the suit, to take the examination of such witness forthwith, or on any day that may be fixed for that purpose, of which due notice shall be given to the parties if the day be fixed in their absence The witness shall be examined, and his deposition shall be taken down in writing, in the manner hereinbefore prescribed, and the deposition so taken down may be read in evidence at any hearing of the suit

A witness may for sufficient cause be examined immediately

174 All witnesses shall be examined upon oath or affirmation, or otherwise, according to the provisions of the law for the time being in force in relation to the examination of witnesses

Witness to be examined upon oath or according to the law for the time being

Of Commissions to Examine Absent Witnesses and Make Local Enquiries

175 When the evidence of a witness is required, who is resident at some place distant more than a hundred miles from the place where the Court is held, or who is unable from sickness or infirmity to attend before the Court to be personally examined, or is a person exempted by reason of rank or sex from personal appearance in Court, the Court may, of its own motion, or on the application of any of the parties to the suit or on the representation of the witness, order a Commission to issue for the examination of such witness, on interrogatories or otherwise, and may, by the same or any subsequent order, give all such directions for taking such examinations as may appear reasonable and just If the witness be resident within the jurisdiction of the Court issuing the Commission, the Commission may be issued to any Officer of the Court or to any subordinate Court, or to any other person or persons whom the Court issuing the Commission may think proper to appoint If the witness be resident at some place which is beyond the jurisdiction of the Court issuing the Commission, and not within the *original jurisdiction of the High Court of Judicature*, the Commission shall ordinarily be issued to the Court within whose jurisdiction the witness may reside, and which can most conveniently execute the same, but, under special circumstances, the Commission may be issued to any other person or persons whom the Court issuing the Commission may think proper to appoint

Cases in which Court may issue a Commission to examine witnesses

When the witness resides within the Court's jurisdiction

When the witness resides beyond the Court's jurisdiction and not within the *original jurisdiction of the High Court*

176 If the witness be resident within the original jurisdiction of the *High Court*, the Commission shall ordinarily be issued to the Court of Small Causes held under Act IX of 1850 *(for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay)*, but may, under special circumstances be directed to any person or persons whom the Court issuing the Commission may think proper to appoint

When the witness is within the *original* jurisdiction of the *High* Court

177 When the evidence of a witness is required, who is resident at some place not within the jurisdiction of the High Court *in either of its jurisdictions*, but within the British territories in India or within the territories of a Native Prince or State in alliance with the British Government, the Court, if it be satisfied that the evidence of such witness is necessary, may, of its own motion, or on the representation of any of the parties to the suit, issue a Commission for the examination of the witness, provided that, if the suit be pending in any Court subordinate to the principal Civil Court of a District, such subordinate Court shall not issue the Commission, but the principal Civil Court of the District may issue the Commission on the application of the subordinate Court

When the witness is not within the jurisdiction of the *High* Court but within the British territories or the territories of any Native Prince or State in alliance with the British Government

178 When the evidence of a witness is required, who is resident at some place beyond the said territories, and not within the territories of a Native Prince or State in alliance with the British Government, the *High Court*, if the suit in which the evidence of the witness is required be pending in that Court, and the Court be satisfied that such evidence is necessary, may, of its own motion, or on the application of any of the parties to the suit, issue a Commission to examine the witness, if the suit be not pending in the *High* Court, that Court may issue the Commission on the application of the Court in which the suit is pending In all such cases, the Commission may be issued to any person or persons whom the *High* Court may think proper to appoint

When the witness is beyond the said territories and not within the territories of any Native Prince or State in alliance with the British Government

179. After the Commission has been duly executed it shall be returned, together with the deposition of the witness who may have been examined thereunder, to the Court out of which the Commission issued, unless otherwise directed by the order for issuing the Commission; in which case it shall be returned in terms of such order, and the Commission and the return thereto and the deposition of the witness who may have been examined under such Commission shall in all cases form part of the record of the suit. But no deposition taken under a Commission shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant, without collusion, more than a hundred miles from the place where the Court is held, or exempted by reason of rank or sex from personal appearance in Court, or unless the Court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same.

Commission to be returned to the Court issuing it with the depositions of the witnesses.

When depositions may be read in evidence.

LOCAL ENQUIRY.—(*Vide Section lxxiii, Act X. of* 1859.)

180. In any suit or other judicial proceeding in which the Court may deem a local investigation to be requisite or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages, the Court may issue a Commission to an Officer of the Court appointed to execute such Commissions, or, if there be no such Officer, to any suitable person, directing him to make such investigation, and to report thereon to the Court. In all such cases, unless otherwise directed by the order of appointment, the Commissioner shall have power to examine any witnesses who may be produced to him by the parties or any of them, the parties themselves, and any other persons whom he may think proper to call upon to give evidence in the matters referred to him; and also to call for and examine documents and other papers relevant to the subject of enquiry: and persons not attending on the requisition of the Commissioner, or refusing to give their testimony, or to produce any documents or other papers, shall be subject to the like disadvantages, penalties, and punishments, by order of the Court, on the report of the Commissioner, as they would incur for the same offences in suits tried before the Court. The Commissioner, after such local inspection as he may deem necessary, and after reducing to writing, in the manner hereinbefore prescribed for taking the depositions of witnesses, in the presence of the Judge, the depositions taken by him, shall return the depositions, together with his report in writing, subscribed with his name, to the Court. The report and depositions shall be taken as evidence in the suit, and shall form part of the record; but it shall be competent to the Court, or to the parties to the suit or any of them, with the permission of the Court, to examine the Commissioner personally in open Court, touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation.

Commission for local investigation.

The report and depositions to be taken as evidence in the suit. Commissioner may be examined in person.

181. In any suit or other judicial proceeding in which an investigation or adjustment of accounts may be necessary, it shall be lawful for the Court to appoint such Officer or other person as aforesaid to be a Commissioner for the purpose of making such investigation or adjustment, and to direct that the parties or their attorneys or pleaders shall attend upon the Commissioner during such investigation or adjustment. In all such cases, the Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary for his information and guidance, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation. The proceedings of the Commissioner shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them, in which case the Court shall make such further inquiry as may be requisite, and shall pass such ultimate judgment or order as may appear to it to be right and proper in the circumstances of the case.

A Commission may be appointed to investigate and adjust accounts.

182. Whenever a Commission is issued, either for taking evidence or for a local investigation, or an investigation into accounts, the Court, before issuing the Commission, may order such sum as may be thought reasonable for the expenses of the Commission to be paid into Court by the party at whose instance or for whose benefit the Commission is issued.

Expenses of Commission to be paid into Court before issue thereof.

SALES OF UNDER-TENURES NOT FOR THEIR OWN ARREARS.—(*Vide Section cx.*)

248. Sales in execution of decrees shall be conducted by an Officer of the Court or by any other person whom the Court may appoint, and shall in all cases be made by public auction in manner hereinafter mentioned.

Sales to be by public auction.

249. In all cases of intended sale by public auction, . . . of . . . immoveable property, in execution of a decree, a proclamation of the intended sale, specifying the time and place of sale, the property to be sold . . . . . and the amount for the recovery of which the sale is ordered, together with any other particulars

Notification of sales by public auction.

that the Court may think necessary, shall be made in the current language of the District. The proclamation shall also declare that the sale extends only to the right, title, and interest of the defendant in the property specified therein. Such proclamation shall be made on the spot where the property is attached by beat of drum, or in such other mode as may be customary, and a written notification to the same effect shall be affixed in the Court-house of the Judge who shall have ordered the sale, and in some conspicuous spot in the town or village in which the attachment may have taken place. When the property ordered to be sold may consist of land or of any right or interest in land, the written notification shall also be affixed in the Office of the Collector of the District in which such land is situate and in the Court-house of the principal Civil Court of the District where the Court which ordered the sale is subordinate to such Court. The sale shall not take place until after the expiration of at least thirty days in the case of immoveable property, ... calculated from the date on which the notification shall have been affixed in the Court-house of the Judge ordering the sale.

Time of sale.

. . . . . .

253. In all cases of sale of immoveable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit, the property shall forthwith be again put up and sold.

Deposit by purchaser in case of sale of immoveable property.

254. The full amount of purchase money shall be made good by the purchaser before sunset of the fifteenth day from that on which the sale of the property took place, or, if the fifteenth day be a Sunday or other close holiday, then on the first office day after the fifteenth day: and in default of payment within such period the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. If the proceeds of the sale which is eventually consummated be less than the price bid by such defaulting purchaser, the difference shall be leviable from him under the rules for enforcing the payment of money in satisfaction of a decree of Court.

At what time full amount of purchase money to be made good.

Procedure on default.

Defaulting purchaser answerable for loss by re-sale.

255. Every re-sale of immoveable property in default of payment of the purchase money shall be made after the issue of a fresh notification in the manner and for the period prescribed for original sales.

Notification on re-sale of immoveable property.

256. No sale of immoveable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale; but no sale shall be set aside on the ground of such irregularity, unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

Confirmation of sale.

257. If no such application, as is mentioned in the last preceding Section, be made, or if such application be made, and the objection be disallowed, the Court shall pass an order confirming the sale, and, in like manner, if such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale for irregularity. If the objection be allowed, the order made to set aside the sale shall be final, if the objection be disallowed, the order confirming the sale shall be open to appeal, and such order, unless appealed from, and if appealed from, then the order passed on the appeal shall be final, and the party against whom the same has been given, shall be precluded from bringing a suit for establishing his claim.

The sale, if not objected to for irregularity, or if the objection is disallowed, shall become absolute.

When the order to set aside a sale shall be open to appeal.

258. Whenever a sale of immoveable property is set aside, the purchaser shall be entitled to receive back his purchase money, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.

If the sale be set aside, price to be returned to purchaser.

259. After a sale of immoveable property shall have become absolute in manner aforesaid, the Court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

Certificate to be granted to the purchaser of land.

260. The certificate shall state the name of the person who at the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser, on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Certificate to state the name of actual purchaser.

263. If the property sold shall consist of . . . land, . . in the occupancy of a defendant, or some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the attachment of such property, the Court shall order delivery thereof to be made by putting the party to whom the . . . . . land . . . . . may have been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof, and, if need be, by removing any person who may refuse to vacate the same.

Delivery of immoveable property in the occupancy of defendants

264. If the property sold shall consist of land . . . . . in the occupancy of ryots, or other persons entitled to occupy the same, the Court shall order delivery thereof to be made, by affixing a copy of the certificate of sale in some conspicuous place on the land . . . . . and proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the right, title, and interest of the defendant has been transferred to the purchaser.

Delivery of immoveable property in the occupancy of ryots, &c.

APPENDIX C.

ACT NO. VIII. OF 1865. (*Bengal Council.*)

Received the assent of the Lieutenant-Governor on the 10th May, 1865, and of the Governor-General on the 27th May, 1865.

An Act to amend the law for the sale of such under-tenures as by the Title Deeds, or established usage of the country, are transferable by sale, or otherwise, for the recovery of arrears of rent due in respect thereof.

Preamble.

WHEREAS doubts have arisen, in consequence of the repeal of Section xvi of Regulation VII of 1832, as to the authority by whom putnee talooks and other saleable under-tenures of the nature defined in Clause 1 of Section viii of Regulation VII. of 1819 are to be sold for arrears of rent due to the proprietor on account thereof; and whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears; It is enacted as follows:

Meaning of the word "Collector."

I. The word "Collector," as used in this Act, includes all Officers exercising the full powers of a Collector of a District.

Words used in the singular number include the plural.

Laws repealed.

II. Section xvi of Regulation VIII. of 1819 of the Bengal Code, Act VIII. of 1835, and Section x of Act VI. of 1853 are repealed, except in so far as any other Regulation or law is repealed thereby.

Sale by whom to be conducted.

III. The sale for the recovery of arrears of rent of putnee talooks and other saleable under-tenures of the nature defined in clause 1 of Section viii. of Regulation VIII. of 1819, shall be conducted by the Collector of Land Revenue in whose jurisdiction, as defined by Act VI. of 1853, the lands lie, and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid, which, by Regulations VIII. of 1819 and I. of 1820, the Judge is required to perform, shall be performed by the said Collector.

Notice of sale where to be hung up.

IV. Whenever a decree for an arrear of rent, due in respect of an under-tenure saleable under the provisions of Section cv of Act X. of 1859, shall have been obtained, and an application for the sale of the said under-tenure under the same Section shall have been made and allowed, the Collector in whose Court the decree is in course of execution, shall thereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the District within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date, not less than twenty days from the hanging up of the said notice in the Court in which the decree is in course of execution.

Notice of sale what to contain.

V. The said notice shall specify, in the words used in the plaint, in the suit in which the decree was made, the name of the village, estate, and pergunnah or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

How the sale may be stopped.

VI. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of Section xiii of Regulation VIII. of 1819, for the recovery of sums paid by other than the defaulting holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this Section.

Sale to be to the highest bidder.

VII. The under-tenure shall be sold to the highest bidder in open Court.

Purchaser to deposit 25 per cent.

VIII. The party who shall be declared to be the purchaser, shall be required to deposit immediately, in cash or Government Currency Notes, twenty-five per cent. of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office day.

IX. The full amount of the purchase money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or if the eighth day be a Sunday or other close holiday, then on the first office day after the eighth day; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto, or to any part of the sum for which the said under-tenure may be subsequently sold. If the proceeds of the sale, which may be eventually completed, be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law, for enforcing the payment of money in satisfaction of a decree for arrears of rent.

Deposit to be forfeited if balance of purchase money be not paid up in time.

X. The provisions of all the Sections of this Act with regard to sales, shall also be applicable to all re-sales under this Act which may be rendered necessary by the default of any purchaser.

Provisions as to sales to apply to all re-sales.

XI. When the purchase money shall have been paid in full, the Officer holding the sale shall give the purchaser a certificate in the form prescribed in the Schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an Officer or Ameen to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein.

Certificate and possession to be given to purchaser on payment by him in full.

XII. From the proceeds of the sale of the under-tenure, the Officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.

Proceeds of sale how to be dealt with.

XIII. An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector, under this Act, if made within thirty days from the date of the sale; but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury to the interests of one of the parties to the suit in which the decree was passed.

Appeal.

XIV. No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner, in any case in which an appeal has been heard by a Collector, and the Board of Revenue, in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

Power of Revision.

XV. If any sale of an under-tenure shall, under either of the two preceding Sections, be set aside, the purchaser shall be entitled to receive back the purchase money, with or without interest, and in such manner as the appellate or revising authority may in each instance direct. Any order for the recovery of the purchase money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force for the recovery of arrears of rent.

Purchaser to recover purchase money in such manner as appellate or revising authority may direct, if sale be set aside.

XVI. The purchaser of an under-tenure sold under this Act shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which his under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees. Provided that nothing herein contained shall be held to entitle the purchaser to eject Khoodkasht ryots or resident hereditary cultivators, nor to cancel *bonâ fide* engagements made with such class of ryots or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor. Nothing in this Section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

Purchaser to acquire the under-tenure, with certain exceptions, free of incumbrances.

XVII. The purchaser of an under-tenure sold under this Act shall apply to the zemindar or other landholder, within fifteen days from the day of sale, to have his name registered in the zemindar or other landholder's books as the purchaser, and shall execute a kabooleut on the same terms and conditions on which the under-tenure was held by the defaulter; and, if such application be not made within fifteen days, it shall be lawful for the zemindar or other landholder to sue the said purchaser under the provisions of Clause 1 of Section xxiii of Act X. of 1859.

Zemindar how to proceed if purchaser do not register.

XVIII. The provisions of Section iii shall be applicable to all sales held under Regulation VIII. of 1819, previously to the passing of this Act; and no suit shall lie in respect of such sales on the plea of want of jurisdiction of the Officer by whom they were conducted.

Indemnity.

Schedule referred to in Section XI.

I certify that *A B* has purchased, under Act VIII of 1865, the under-tenure (*as specified in the notice of sale*), and that his purchase took effect on the day of (*being the day after that fixed for the last day of payment*)

(*Signed*) *C D*, *Collector.*

APPENDIX (D)—*(Vide Section clxvi)*

THE LAW FOR THE SALE OF PATNI TALUKS

A D 1819. REGULATION VIII

A REGULATION *to declare the validity of certain tenures, and to define the relative rights of Zemindars and Putnee Talookdars, also to establish a process for the sale of such Talooks in satisfaction of the Zemindar's demand of rent, and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal* PASSED *by the Governor-General in Council on the 3rd September*, 1819.

1 By the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mehals were declared to be entitled to make any arrangements for the leasing of their lands in talooks or otherwise, that they might deem most conducive to their interests By the rules of Regulation XLIV, 1793, however, all such arrangements were subjected to two limitations first, that the jumma, or rent, should not be fixed for a period exceeding ten years, and secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale The provisions of Section II, Regulation XLIV, 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by Section II, Regulation V, 1812, and in Regulation XVIII of the same year, it is more distinctly declared that zemindars are at liberty to grant talooks or other leases of their lands fixing the rent in perpetuity at their discretion subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue in the same manner as heretofore In practice, the grant of talooks and other leases at a rent fixed in perpetuity had been common with the zemindars of Bengal for some time before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V. and XVIII of 1812 or in any other Regulations, whether tenures at the time in existence, and held under covenants or engagements entered into by the parties in violation of the rule of Section II, Regulation XLIV, 1793, should, if called in question, be deemed invalid and void as heretofore This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force Furthermore, in the exercise of the privilege thus conceded to zemindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rajah of Burdwan, but has since been extended to other zemindaries; the character of which tenure is, that it is a talook created by the zemindar, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever, the tenant is called upon to furnish collateral security for the rent and for his conduct generally, or he is excused from this obligation at the zemindar's discretion, but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always, in practice, been liable to be so called upon at the option of the zemindar By the terms also of the engagements interchanged, it is amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the zemindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated putnee talooks, and it has been a common practice of the holders of them to under-let, on precisely similar terms, to other persons, who, on taking such leases, went by the name of durputnee talookdars, these again sometimes similarly under-let to seputneedars, and the conditions of all the title deeds vary in nothing material from the original engagements executed by the first holder In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant, that is, whether, in case the proceeds of sale should exceed the zemindar's demand of rent, the tenant would be entitled to such excess, neither is the manner of sale specified, nor do the usages of the country, nor the Regulations of Government, afford any distinct rules, by the application of which to the specific cases the defects above alluded to could be supplied, or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner The tenures in question have extended through several zillahs of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them

have been productive of such confusion as to demand the interference of the Legislature; it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a putnee talook as above described; also to declare the legality of the practice of under-letting in the manner in which it has been exercised by putneedars and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the zemindar or other for his ruin, as well as to secure the just rights of the zemindar on the sale of any tenure under the stipulations of the original engagements entered into with him. It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale; and whereas the estates of zemindars under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Government, it has seemed just to allow any zemindar who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the Regulations in force; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year. It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters. The following rules have accordingly been enacted by His Excellency the Most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the province of Bengal, including Midnapore.

II. It is hereby declared that any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded for a term of years or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V, 1812, and while the rule of Section ii., Regulation XLIV., 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question, provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, under the rule of Section v., Regulation XLIV.* 1793, unless specially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

Leases fixing rent in perpetuity, or for a longer term than ten years, declared valid, though executed while Sec. ii., Reg. XLIV, 1793, was in force.

III. *First.* The tenures known by the name of putnee talooks, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of Judicature, in the same manner as other real property.

Putnee tenures declared valid, transferable, and answerable for debt.

Second. Putnee talookdars are hereby declared to possess the right of letting out the lands composing their talooks, in any manner they may deem most conducive to their interest, and any engagements so entered into by such talookdars with others, shall be legal and binding between the parties to the same, their heirs, and assignees; provided, however, that no such engagements shall operate to the prejudice of the right of the zemindar to hold the superior tenure answerable for any arrear of his rent, in the estate in which he granted it, and free of all incumbrances resulting from the act of his tenant.

Putneedar's right of under-letting declared.

Third. In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this Section, it shall not be liable to be cancelled for the same under the rule contained in the seventh clause of Section xv., Regulation VII, 1799, for leases conveying a limited interest in the land; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due, subject, however, to the provisions contained in Section xvii. of this Regulation.

Putnee tenures declared not voidable for arrears.

IV. If the holder of a putnee talook shall have under-let in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding Section to attach to putnee talooks, in so far as concerns the grantor of such under-tenure. The same construction shall also hold in the case of putnee talooks of the third or fourth degree.

Inferior tenures held under similar title-deeds will be deemed to confer a similar interest to that provided for putnee talooks in Section iii.

* See Secs. xxxvii and lii., Act XI of 1868.

V. The right of alienation having been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and accepting the engagements of the transferee. In conformity, however, with established usage, the zemindar or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent. on the jumma or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account. The zemindar shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jumma or yearly rent payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zemindar or other superior, under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though, of course, liable to be called on to give security under the conditions of the tenure purchased.

Zemindar not entitled to refuse to give effect to a transfer.
But may demand his fee.
Fee fixed at 2 per cent. on the jumma.
But the maximum one hundred rupees.
May also demand security.
As far as half the jumma.
Above rules to apply to sales in execution and all alienations.
But no fee on sale for arrears.

VI. It shall be competent to the zemindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted; provided, however, that if the security tendered by any purchaser or transferee should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it, and give effect to the transfer without delay. It is hereby provided that the rules of this and of the preceding Section shall not be held to apply to transfers of any fractional portion of a putnee talook, nor to any alienation other than of the entire interest; for no apportionment of the zemindar's reserved rent can be allowed to stand good, unless made under his special sanction.

Zemindar may refuse sanction to transfer till fee and security be tendered.
Sufficiency of security, if contested, to be determined by appeal to Civil Court.

VII. In case of the sale of a putnee tenure in execution of a judgment of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of Section v. of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zemindar or other superior shall be entitled, of his own authority, to send a suzawal to attach and hold possession of the tenure until the forms prescribed be observed. In case, also, of the sale of a putnee tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the zemindar, and the purchaser fail to furnish the same within one month of the date of sale, the zemindar shall similarly be entitled to send a suzawal to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given. Attachments made under this Section shall be regarded as trusts for the benefit and at the risk of the purchaser; consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections, shall be held in deposit for such purchaser; but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zemindar or other superior making the attachment, shall be received as *prima facie* evidence to warrant process for an arrear so accruing.

Upon public sale, if security be not tendered within one month, zemindar may attach.
Attachment to have the effect of a trust.

VIII. *First.* Zemindars, that is, proprietors under direct engagements with the Government, shall be entitled to apply,* in the manner following, for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Zemindars to be allowed periodical sales of tenures, in which right to sell for arrears is reserved by stipulation.

Second. On the first day of Bysakh,† that is, at the commencement of the following year from that of which the rent is due, the zemindar shall present a petition . . . . . to the Collector, containing a specification of any balances that may be due to him on account of the expired year from all or any talookdars, or other holders of an interest of the nature described in the preceding clause of this Section. The same shall then be stuck up in some conspicuous part of the kutcheree, with a notice that if the amount claimed

First sale to be applied for on the first of Bysakh.
Notice to be published that it will take place on the first of Jyte.
Notice to be sent into the Mofussil.
Rules for serving it.

* Board's Rule XXVI. † Board's Rule XXVII.

be not paid before the first of Jyte following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should, however, the first of Jyte fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead, a similar notice shall be stuck up at the sudder kutcheree of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be BY HIM sent, to be similarly published at the kutcheree, or at the principal town or village upon the land of the defaulter The zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the Mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot If it shall appear from the tenor of the receipt, or attestation in question, that the notice has been published at any time previous to the fifteenth of the month of Bysakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kutcheree of the nearest moonsiff or, if there should be no moonsiff, to the nearest thannah, and there make voluntary oath of the same having been duly published, certificate to which effect shall be signed and sealed by the said officers, and delivered to the peon

Third. On the first day of Kartick, in the middle of the year, the zemindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aughun, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick, to less than one-fourth, or a four-anna proportion of the total demand of the zemindari, according to the Kistbundee, calculated from the commencement of the year to the last day of Kartick

Mid year sale to be applied for on the first of Kartick

Notice as above for sale the first of Aughun

If arrear be not less than one fourth of demand

IX. All sales of saleable tenures applied for under the rules of this Regulation, shall be made in public kutcheree by the *Collector, or his Deputy or Assistant of the district* within which the lands may be situated, the land shall be sold to the highest bidder, and every one, not the actual defaulter, shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter, fifteen per cent of the purchase money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours If the fifteen per cent be not paid in cash, or in *Government Currency* Notes, within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be re sold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sudder station of the zillah, after which the lot shall be re-sold, at the appointed time, at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent already made . . and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one, such deficiency to be levied by the process for the execution of decrees of the Civil Courts

Collector to conduct the sale

Rules for bidding, &c

Fifteen per cent to be paid on sale

Or lot to be re sold after two hours

Failing remainder, re sale on ninth day after

X. At the time of the sale, the notice previously stuck up in the kutcheree shall be taken down and the lots be called up successively in the order in which they may be found in that notice A person shall attend on the part of the zemindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the Mofussil, nor shall any lot be put up to sale, until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate roobakaree to be held upon each lot sold If the sale be of the description provided for in the third clause of Section VII of this Regulation, the kistbundee of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale, nor shall the sale take place unless this be ascertained The zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation

Forms to be observed on selling

Zemindar to certify balance

And service of notice in Mofussil

On his own responsibility

XI. *First.* It is hereby declared that any talook or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said talook may have been held. No transfer by sale, gift, or otherwise, no mortgage or other

Tenure to be sold free of incumbrance by act of defaulter

limited assignment, shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar

Second. In like manner, on sale of a talook for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred, the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the ryots, this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent

No under lease to stand after sale

Third Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure, intermediate between the zemindar and actual cultivators, to eject a khoodkasht ryot, or resident and hereditary cultivator, nor to cancel *bonâ fide* engagements made with such tenants, by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor

Exception in favor of *bonâ fide* engagements with ryots

XII The rules of the preceding Section being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the zemindar's reserved rent, will equally apply to the case of talooks heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling Nothing, however, herein contained shall operate to the prejudice of the agreement, express or implied, now subsisting between the purchaser of a talook and the lessees of his predecessor.

Above rule to take effect retrospectively

Proviso

Neither shall the rule for the fall of the under-tenures be considered to apply to any private transfer by a talookdar of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talookdar in favor of the zemindar, nor to any act originating with the former holder, other than default as aforesaid all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act

But not to apply to private transfers

XIII *Last* With reference to the injury that may be brought upon the holder of a talook of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zemindar, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such talookdars the means of saving their tenures from the ruin that must attend such a sale, and the following rules have accordingly been enacted for this purpose

Reason for allowing under tenants a means of staying sale

Second. Whenever the tenure of a talookdar of the first degree may be advertised for sale in the manner required by the second and third clauses of Section VIII of this Regulation, for arrears of rent due to the zemindar, the talookdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the zemindar on the day appointed for sale in like manner, they shall be entitled to lodge money, antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the zemindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it

Manner of doing so
By lodging the advertised balance

Third If the amount so lodged shall be rent due by the inferior talookdar to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published

In case of rent due being lodged
Credit to be given

Fourth If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the talook so preserved shall be the security to the person or persons making the advance, who shall be considered to

In case of advance from private funds

To have the effect of mortgage

have a lien thereupon, in the same manner as if the loan had been made upon mortgage, and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon re payment of the entire sum advanced, with interest at the rate of twelve per cent per annum, up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure

Defaulter how to recover possession

XIV *First* Should the balance claimed by a zemindar, on account of the rent of any under-tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in Sections IX and X of this Regulation, nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged * It shall, however, be competent to any party desirous of contesting the right of the zemindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zemindar for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and, upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zemindar or person at whose suit the sale may have been made

Sale not to be stayed except the arrear claimed be lodged

But action to lie for its reversal

Second In cases also in which a talookdar may contest the zemindar's demand of any arrear, as specified in the notice advertised, such talookdar shall be competent to apply for a summary investigation at any time within the period of notice, the zemindar shall then be called upon to furnish his kubooleut and other proofs at the shortest convenient notice, in order, that the award may, if possible, be made before the day appointed for sale Such award, if so made, will of course regulate the ulterior process, but if the case be still pending, the lot should be called up in its turn, notwithstanding the suit, and if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities or notes, by the talookdar contesting the demand, and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale

Summary investigation may be applied for by defaulter

But not to stay sale without deposit

XV *First* So soon as the entire amount of the purchase money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kutcheree of the zemindar, and, upon furnishing security, if required, to the extent of half the jumma of annual rent, he shall receive the usual umuldustuk or order for possession, together with the notice to the ryots and others to attend and pay their rents henceforward to him The zemindar shall also be bound to furnish access to any papers connected with the tenure purchased, that may be forthcoming in his kutcheree, and should he in any manner delay the transfer in his office, or refuse to give the order for possession, notwithstanding that good and substantial security shall have been furnished, or tendered, on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession of the lands by means of the Nazir in the same manner as possession is obtained under a decree of Court provided, however, that if the delay be on account of the zemindar's contesting the sufficiency of the security tendered, the rule contained in Section VI of this Regulation shall be observed

Rules for purchasers obtaining possession

Zemindar to give transfer on security being furnished, if required

Remedy in case of delay

Proviso

Second When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the *Collector* for the aid of the public officers in obtaining possession of his just rights A proclamation shall then issue under the seal of the Court and signature of the *Collector*, declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zemindar, acquired the entire rights and privileges attaching to the tenure of the late talookdar, in the state in which it was originally derived by him from the zemindar, he alone will be recognized as entitled to make the zemindaree collections in the Mofussil, and no payments made to any other individual will on any account be credited to the ryots, or others, in any suit, for rent, brought under the provisions of *Section xxiii, cl 4, Act X of* 1859, or in any application to stay

In case of opposition

Proclamation to issue from Court

* Board's Rule XXVIII

process by distraint, under the rules of *the same Act*, or on any other occasion whatever, when the same may be pleaded

Third Should the late incumbent, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers, and of all other public officers who may be at hand, and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same, and, in event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights

In case of further opposition

Police and all public officers to aid

XVI * (*Repealed*) *Act VIII of* 1865, *B C*

XVII *First* The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation

Rules for disposing of the purchase money of sales for arrears under this Regulation

Second. One per cent shall first be deducted from the net proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain, for carrying into effect the provisions of this Regulation

One per cent to be carried to the account of Government

Third The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the talook to sale) to the zemindar or other person to whom the same may be due, provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied Such antecedent balances, if the zemindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual talookdar, and must be recovered in the same way as other debts by a regular suit in the Court

Zemindar's balance and expenses to be next made good

But not antecedent balances

Fourth Any excess that may remain after satisfying the demand of the zemindar, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector, or Assistant Collector, of the district, to be there held in deposit to answer the claims of the talookdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the talook sold, or on any part of it

Remainder to be sent to the Collector's treasury

To answer claims of under-tenants

Fifth It shall be competent to any one conceiving himself to possess such an interest, to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled, and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees

Under tenants free to prosecute for the price of their interests or compensation from the date of sale

Payment how to be made from deposit, if many claims

Sixth Provided, however, that no talookdar of the second degree, or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior talook, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale

Action not to lie if the under tenant be himself in arrear at the time of sale

Seventh Should no claims upon the purchase money of a talook, sold as above, be brought forward by any under tenants or assignees, within the period of two months from the date of the sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the *Collector* for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the *Collector*, of there being no claims to afford ground of detention for the whole or any part of the deposit, and upon exhibiting such certificate to the *Collector*, the amount set free thereby shall be paid to his receipt In the same manner, upon executing a decree passed in favor of any under-tenants or assignees, they shall receive certificates under the seal of the *Collector*, declaring the amount adjudged to them out of the deposit, and upon exhibiting the certificates, the amount shall be paid severally to their receipts by the *Collector*.

In case of no claim in two months or only partial claims, defaulter to receive the excess unclaimed

Eighth. It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

Any party interested may substitute Government securities for cash in deposit.

INDEX.

The Rulings of the High Court and the Board's Rules are Indexed in Italics.

R. O.=RIGHT OF OCCUPANCY; F. R.=RIGHT TO HOLD AT FIXED RATES.

	Page.
ABATEMENT OF RENT.	
Right of Ryot with R. O. to, XVIII.	9
SUIT FOR, XXIII. 3	12
Decree for arrears to be given, notwithstanding suit, 173	—
Suit to obtain declaration of rent, setting aside a deed, is not cognizable by Collector, 174 ..	—
Patnidar can sue, 175	—
May be allowed for diluvion, 176	—
A Ryot without R. O. can sue. 177	—
Lessee, holding over, can only claim abatement under the terms of his lease, 178 ..	13
Cannot be claimed for dispossession by any one other than landlord, 179	—
Can be claimed for loss of area, contrary condition of lease notwithstanding, 180 ..	—
Only the amount claimed can be decreed, 181	—
Date of cause of action in a suit for, 182	—
ABATEMENT OF SUIT *does not follow necessarily upon death of party*, 312	21
ABSENCE (*See* NON-ATTENDANCE).	
ACCOUNTS (*See* AGENT).	
Suit for, XXIV	22
Limitation of ditto, XXXIII.	26
Execution of decree for, LXXXIV	37
ACTION in Civil Court (*See* CIVIL COURT).	
ADJOURNMENT.—To give plaintiff time to apply for second warrant, LII	30
BEFORE FIXING OF ISSUES. In *ex-parte cases*, for attendance of defendant, LVI ..	—
In *all* cases for recorded reasons, LIX	31
For attendance of principal, when Agent's personal knowledge is defective, LXIV ..	32
AFTER FIXING OF ISSUES. For recorded reasons, LXV	—
COLLECTOR'S GENERAL POWERS OF, LXXII	34
The exercise of them is optional, 465	—
Should be reasonable, 464	—
OF SALE OF DISTRAINED PROPERTY, CXXX	47
ADMINISTRATION (*See* CERTIFICATE).	
ADVERSE POSSESSION, *plea of, bars subsequent plea of right of occupancy*, 39	3
AGENT—FOR MANAGEMENT OF LAND.	
May sign notice of enhancement, 89	6
After ratification of his acts, his powers cannot be impugned, 279	18
Suit against, XXIV	22
Lies against a relative acting as Agent, 301	18
Does not lie against other Agents, 359	—
Lies against a Dewan, 360	—
Does not lie against a Shareholder, 363	—
Nor against a self-constituted Agent, 362..	—
Lies though Agent have committed criminal offence. 364	—
Liability of heirs, 365	—
Can be brought only by employer in possession, 366	—
Intervenor cannot appear in such a suit, 367	22
Limitation of suit against, XXXIII (*See* LIMITATION)	26
Ditto in case of fraud	—
Suspension of Agent determines the agency, 425	—
Fraud must be by Agent personally, 427	27
Right of suit revives if Agent puts in accounts at any time, 428	—

	Page.
AGENT—FOR MANAGEMENT OF LAND.—*(Continued.)*	
No suit against surety, 429	27
Execution of decree against, LXXXIV	37
Ditto against surety, LXXXV	—
May institute or defend suits, LXIX	33
Without power of attorney, 463	—
But if he does so, is to be treated as principal, LXIX	—
Cannot oppose his principal, under Section 77, *Act X of* 1859, 487	36
Cannot distrain without Power of Attorney, CXIV	42
Is personally liable for illegal act done under color of distraint, *ib.*	—
Notice of deposit of rent may be served upon, V	55
May apply for issue of Notice of Enhancement, XIII	5
May receive Notice of Relinquishment, XIX	9
May represent claimant of property attached in execution of decree, C	39
AGENT AUTHORIZED WITH PERSONAL KNOWLEDGE—May present Statement of Claim, XXXV	27
Need not be the plaintiff's General Agent; the Court cannot require the presence of the plaintiff without hearing Agent, 433	—
May be Gomashta, 431	—
Board's Rules regarding, II	61
May represent the defendant, XLIII	28
To be examined and cross-examined like principal, LIX	31
Petition to correct his deposition to be received with great caution, 447	—
Procedure, if Collector consider his personal knowledge defective, LXIV	32
Suit cannot, on this ground, be dismissed at hearing, 434	27
AGENT AUTHORIZED, OR MUKHTAR.—May be employed to conduct a case, LXXI	34
Board's Rules regarding, II	61
AMIN (*See* CIVIL COURT AMIN, DISTRAINT *and* LOCAL ENQUIRY.)	
AMENDMENT of Statement of Claim, XLII	28
Should not be permitted after the case has been heard, 441	—
AMLDASTAK *conveys no title*, 325	20
APPEAL.—From ORDER of Deputy Collector to COLLECTOR, CLI	48
Must be made within 15 days, CLII	49
Proper stamp, 5	61
FROM JUDGMENT of Deputy Collector to COLLECTOR, CLV	49
To be on 8 anna stamp, and to be presented within 15 days, CLVI	—
From ORDER of Collector to COMMISSIONER, CLI	48
Must be made within 30 days, CLII	49
Proper stamp, 5	61
In resistance of Process, case lies to the Executive, CXLVII	48
To the JUDGE, or HIGH COURT, CLX	50
Procedure in such appeals, CLXI	—
PROCEDURE OF COLLECTOR in trial of, CLVII	—
Dismissal for default, *ib.*	—
Decree *ex-parte*, *ib.*	—
Re-admission of, CLVIII	—
Judgment in, CLIX	—
Lies to JUDGE, *in suits for Ejectment*, 496	36
In Resumption cases, 388	24
And from certain judgments passed by Collector, CLIII	49
Not excluding some orders in execution of decree, 519	—
Lies to COMMISSIONER, *in applications for aid to eject*, 374	23
In Registry cases, 387	24
A Court of Appeal cannot reject a case for non-verification of statement admitted below, 436	27
Must give reasons for its decision, 528	49
Cannot try issue not raised below, 539	50
Cannot refuse to correct irregularities committed without jurisdiction, 540	51
From order rejecting petition for rehearing, in appealable cases, XIII	57
From Deputy Collector's judgment, under Section 77, *Act X of* 1859—*(See "Intervenor.)*	
To HIGH COURT *from Collector's order, revising his own order passed in execution of decree*, 518	49
Deputy Collector may try Appeal referred to him, 564	59
SPECIAL, *the law as to*, 531—5	50
NO APPEAL—from a judgment *ex-parte*, or by default, LVIII	31
Nor from an order setting aside a judgment so passed, XIII	57
Not even if the order be passed by a Deputy Collector, 444	31
Nor in execution of decree, CLI	48
Nor from an order passed in appeal by the Executive, CLII	49
But the Board or the Commissioner may call for such cases, *ib.*	—
Nor from Collector's order upon a CLAIM to moveable property taken in execution, CIII	40
Or to an under-tenure sold for its own arrears, CVII	41

	Page.
APPEAL.—*(Continued.)*	
Or to immoveable property taken in execution, CXI	42
Or in measurement cases, X	56
In the preceding four cases there is an appeal to the Civil Court. (See the Section applicable to each case.)	
Board's Rules about Appeals, VIII	66
APPLICATION FOR,—Issue of notice of enhancement, XIII	5
Aid to eject, XXV	22
Registry of subordinate tenure, XXVII	23
Issue of Warrant of Arrest, XLIX	29
Issue of second Warrant or Proclamation, LII	30
Rehearing in *ex-parte* and default cases, LVIII	31
Rehearing in cases in which Collector's judgment is final, CLIV	49
Summons of a witness LXVI	32
Execution of decree, oral and written, XVII	58
Ditto against moveable property, LXXXVII	37
Second and successive do., LXXXIX	38
Sale of under-tenure for its own arrears, CV	40
Execution against immoveable property, CIX	41
Aid in distraint, CXIX	43
Sale of distrained property, CXXII	—
Leave to deposit rent, V	55
Aid when measurement is opposed, IX	56
Measurement by Collector, X	—
Record of tenures, &c., by do., *ib.*	—
Revision of order as to occupancy, &c., *ib.*	—
ARBITRATION *in Act X cases cannot be enforced*, 358	21
AREA.—*Suit for enhancement on ground of excess area. Onus is upon plaintiff*, 113 ..	8
Does not lie against talukdar, 114	—
If land were measured at time of lease, does not lie, 201	14
Or if boundaries were specified, 115	8
Even though lease contained a condition for reduction, if area prove less, 117	—
If boundaries were not specified, suit lies, 116	—
But not always even then, 118	9
ARREAR OF RENT—Defined, XX	10
Ejectment of Ryot for, XXI	—
Cancelment of lease of temporary lease-holder for, XXII	—
Suit for, XXIII. 4	13
Must be instituted within 3 years of close of year, XXXII	26
If for an enhanced rent, within 3 months of ditto, *ib.*	—
Presumption of payment from later credit, 183-5	13
Application of payments on account, 186-187	—
Sets-off, 188-194	—
Deficiency of Area: out of possession, 195-201	14
Res judicatæ, 202-207	—
Effect of possessory Decree or Sale, 208-210	—
Real and ostensible, 211-213	—
Landlord and Tenant, 215-221	15
Claim of Rent-free, 222-228	—
Sazawal, 229-231	—
Heirs of Lessee, 232-233	—
House Rent, 3, 231-240	—
Special Rents, 241-245	16
Waiver, 246-250	—
Shareholders, 251-259	—
Letters of Administration, 260-261	17
Suits for enhanced Rent, 262-264	—
Intervening Defendant, 265-267	—
Miscellaneous, 268-283	—
Imprisonment under decree for, without process, LXXXIV	37
Recovery by DISTRAINT (*See* DISTRAINT)	
Recovery by Patni sale, CLXVI	51
ARREST.—OF DEFENDANT BEFORE HEARING, procedure upon, L	30
Compensation for unreasonable, LIII	—
OF JUDGMENT-DEBTOR, without process, LXXXIV	37
Do. in execution of decree, XCIII	38
For resistance of process, CXLVII	48
Procedure after ditto, XVIII	58
ASSESSMENT.—*Of service tenure*, 161	12
Of excess area (*See* "AREA")	

Page.

ASSESSMENT.—*(Continued.)*
Of rent-free land (*See* RESUMPTION.)
Procedure, XXVIII. 24
ASSIGNEE *of Zemindar may sue for arrears*, 273 17
ASSISTANT to Collector, powers of, CLXV 51
ATTACHED ESTATE.—
Manager cannot create relation of landlord and tenant, nor can right of occupancy grow, 355 21
ATTACHMENT.—Of moveable property in execution, XCIX 39
Of houses or buildings, CX 41
Provisions of Code of Civil Procedure apply, XVI 58
ATTENDANCE.—OF TENANTS cannot be compelled by Zemindar, XI 5
Suit for breach of this law, XXIII 2 12
OF WITNESSES. (*See* WITNESSES.)
AUCTION PURCHASER—*Cannot eject Ryot holding at F. R.*, 3 2
Nor dependent talukdars who so hold, 91 7
Does not confirm a tenure by receiving the rent at the old rate, 274 17
Right of occupancy is good against an auction-purchaser, 378 23
In a suit for resumption of rent-free by auction-purchaser, onus is shifted to defendant, 397 25
OF A GOVERNMENT ESTATE. (*See* GOVERNMENT ESTATE).
AUTHORIZED AGENT (*See* AGENT.)
BAR, PLEA IN, *should not be taken up, for the first time in appeal*, 413-4 26
Onus upon defendant, pleading in bar, to establish the facts, 223-411 15-26
BASTU *Land is liable to enhancement*, 82 66
BATWARA.—(*See* "PARTITION.")
BENAMI PROPRIETORS AND LESSEES, *law as to*, 211-213 14
BOARD OF REVENUE.—To sanction statements required from distraining officer, CXXXVI .. 46
To exercise general control over Collectors and Deputy Collectors, CLI 48
May call for and revise orders passed by Commissioner or Collector in appeal, CLII .. 49
To decide the venue of suits when lands lie in two districts, if there is any dispute, XX 59
Rules as to Stamps, I 60
Authorized Agent, II 61
Judgment and Decree, III 62
Civil Court Amins, IV 63
Sales, V 65
Aid in Distraint, VI .. .. —
Supervision of Subordinates, VII 66
Appeals, VIII .. .. —
Record of Tenures, IX 68
Patni Sales, X .. .. —
Miscellaneous, XI .. .. —
BODY.—*Execution against the* (*See* WARRANT.)
BOUNDARIES, *effect of specifying, in lease*—(*See* "AREA.)
BUILDING, *not under a building lease, does not bar enhancement*, 239 16
BURDEN OF PROOF (*See* ONUS PROBANDI.)
CANAL RENT, *not recoverable under Act X*, 242 .. .. —
CANCELMENT *of lease.* (*See* EJECTMENT AND EQUITABLE RELIEF)
CERTIFICATE. *Under Act XXVII of* 1860 *may be dispensed with in case of representative of deceased party to a suit*, 261 17
CHANGE OF RENT (*See* "RIGHT OF FIXED RENT.")
CHOKIDARI LANDS *should not be assessed to revenue*, 226 15
CIVIL COURT. Action lies to, in the following cases:—
To settle dispute as to right to rent, LXXVII 35
As to right to distrain, CXL 47
For damages—for irregularity in sale of moveable property, CIV 40
To Contest Collector's order upon a claim to moveable property taken in execution, CIII —
Do. do. to under-tenure sold for its own arrears, CVII 41
Do. do. to immoveable property taken in execution, CXI 42
Do. passed in the case of lands under his direct management, under Section XXV, Regulation VII of 1799, XXIX 25
Do. in measurement cases, X 56
Judgment-Debtor under decree of, may continue to collect rent till ousted, 209 14
CIVIL COURT AMIN. (*See* DISTRAINT *and* LOCAL ENQUIRY).
Board's Rules regarding, IV 63
CIVIL JAIL, (*See* IMPRISONMENT), defined, CLXVIII 51
CIVIL PROCEDURE, Code of, (chiefly Act VIII. of 1859) applicable to the following processes under these Acts—
Attachment, XVI 58
As to Witnesses, LXVII 33
Local Enquiries, LXXIII 34
Executions of Decrees for more than 500 Rs., XCII 38

	Page.
CIVIL PROCEDURE.—*(Continued.)*	
Sale of lands in execution not for their own arrears, CX	41
Resistance of Process, CXLVII	48
Appeals to Judge and High Court, CLXI	50
How far applicable, 330-332	20
CLAIMANT (*See* INTERVENOR).	
COLLECTOR—to receive Notice of Relinquishment and serve it, XIX	9
Only can try certain suits, XXIII, XXIV	13, 22
To aid to eject in certain cases, XXV	22
To enquire into and give effect to transfers of tenures, XXVII	23
To try suits for dispossession of holders of certain rent-free lands, XXVIII ..	24
How to recover rents of lands under his management, XXIX	25
May extend time for producing plaintiff's documents, XXXVIII	28
Do. do. defendant's documents, LXII	32
May return imperfect Statement of Claim, XLII	28
When to issue summons, XLIII	—
And warrant, XLIX	29
Must issue summons of another Collector, XLVII	—
But not warrant, XLIX	—
Procedure when defendant is brought before him upon a warrant, LI	30
May issue a second warrant or proclamation, LII	—
May award compensation for unreasonable application for arrest, LIII	—
May strike off case if neither party appear at hearing, or adjourn, LIV	—
In absence of plaintiff, may pass judgment by default, or upon admission, or dismiss the case, LV	—
In absence of defendant may decree ex-parte or adjourn, LVI	—
Petition for adjournment by Mukhtar does not bar ex-parte judgment, 442	31
May require conditions from defendant before he hears a case so adjourned, LVII ..	—
May re-hear a case decided ex-parte or by default, LVIII	—
Must record reasons for adjourning day of hearing, LIX	—
At hearing, to examine the parties upon oath, recording the substance in his own language, LX	—
May then, if possible, give his decree, LXIII	32
Or may summon principal, if agent's knowledge is defective, LXIV	—
When to record issues, LXV	—
May summon witnesses, LXVI	—
May strike off case for non-attendance of parties, LXVIII	33
May summon parties personally, though represented by authorized agent or mukhtar, LXX	34
General powers of adjournment, LXXII	—
May order, or make, local enquiry, LXXIII	—
May fix the term of pottah of ryot with a right of occupancy, LXXVI	—
Must make intervenor party to suit, LXXVII	35
How to pronounce and record judgment, XV	58
May grant pottah if landlord refuse, LXXX	37
His decree for a kabúlyat to be considered a kabúlyat, LXXXI	—
May commit judgment-debtor to jail without process, LXXXII	—
May issue warrant of execution, LXXXVIII	38
And second and successive do, LXXXIX	—
How to commit judgment-debtor to jail by warrant, XCIII	—
May declare a decree for 100 Rupees or under, satisfied by one imprisonment, XCIV ..	—
May stay sale of moveable property to hear claim, C...	39
Do. do. of under-tenure for its own arrears, CVI	40
Do. do. of houses or buildings, CXI	42
May aid distraint, CXIX	43
To issue notice and proclamation for sale of distrained property, CXXIV	44
To stay such sale upon institution of suit, CXXV	—
To release distrained property upon security after institution of suit, CXXVII ..	—
May award damages for groundless distraint in the suit, CXXXVIII	46
Or upon a suit after distraint, CXLI	47
Procedure upon Resistance of Distraint, CXLV	—
Further rules may take security from arrested defendant, XVIII	58
How to issue Processes, CXLVI	48
Procedure upon Resistance of Process, CXLVII	—
How and where to hold his Court, CXLVIII	—
Is subject to general control of Commissioner and Board, CLI	—
To exercise general control over Deputy Collectors, *ib.*	—
To try appeals from *orders* of Deputy Collector, *ib.*	—
If presented within 15 days, CLII	49
And from some *judgments* of ditto, CLIV	—

Page.

COLLECTOR.—*(Continued.)*
If presented within 15 days, besides time for getting copy, CLVI 49
His judgment final in certain cases, CLIII .. .. —
In these he may review upon new evidence, CLIV .. .. —
Procedure in case of appeals from Deputy's *judgment*, CLVII 50
Re-admission of appeal dismissed for default, CLVIII .. .. .. —
Judgment in appeal, CLIX .. .. —
Jurisdiction of, XX 59
Not to extend beyond his own District, CLXIII 51
Unless, under certain circumstances, Board direct, XX 59
To receive and dispose of deposits of rent, V 55
To measure lands on landlord's application, X 56
To record tenures on his special do., *ib.* .. .. —
May alter the record upon application, *ib.* .. .. —
May withdraw suit from any Deputy Collector, XX 59
May decide doubtful jurisdiction of Deputy Collector, *ib.* .. .. .. —
Erroneous proceeding rectified by High Court, 405 25
May delegate powers to Deputy Collector left in charge, XI, 1 68
To supervise Deputy Collector's proceedings, VII 2 66
COMMISSIONER of Revenue—to exercise general control over Collectors and Deputy Collectors, CLI 48
What appeals he is to hear, CLI .. .. —
Appeal from Collector lies to, in resistance of process cases, CXLVII .. .. —
May call for and revise orders passed by a Collector in appeal, CLII 49
To supervise proceedings of local officers, VII 1 66
COMPENSATION.—(*See* DAMAGES) to defendant for application for warrant of arrest without reasonable cause, LIII 30
For extortion of rent by illegal measures, XII 5
From claimant to moveable property to judgment-creditor, CII 39
To defendant, for causeless suit for rent, III 54
CONCURRENT JURISDICTION.—*Powers of Court of*, 343 21
CONFIRMATION OF RIGHT OF POSSESSION.—*Suit lies for, under Clause 6, Section XXIII*, 326 .. 20
CONTRACT *is not invalidated by a decree passed in ignorance of its existence*, 205 14
CONTEMPT.—*Instance of fine for*, 268 17
COSTS of service of summons or warrant, XLVIII 29
Conditions as to, before hearing a case adjourned for defendant's attendance, LVII .. 31
Ditto before re-hearing an ex-parte or default case, LVIII .. .. .. —
To be paid by *judgment-debtor*, LXXXIV 37
Including diet money for support in prison, XCVII 39
Of notice upon defaulter to be deposited with application for sale of distrained property, CXXIII 43
Of distraint and sale, CXXXII 45
If no sale take place, CXXXV .. .. —
Of *Process* and of *Witnesses* to be deposited, CXLVI 48
Provision as to, when defendant pays into Court after previous tender, VII 55
Ditto without previous tender, VIII 56
COUNTERPART.—(*See* KABULYAT.)
COURT—Where and how to be held, CXLVIII 48
And when, 2 69
CUSTOM.—*Rule of law as to proof of*. 311 21
Must decide whether a tenure is transferable or not, 137 10
And so as to right of occupancy, 49 4
DAMAGES—From exaction of excess rent or withholding receipts, X 5
Not necessarily awardable; there must be enquiry, 62 .. .. —
Must be awarded; the amount only is discretionary, 63 .. .. —
For extortion of rent by illegal process, XII .. .. —
SUIT FOR, XXIII, 2 12
Against judgment-creditor for sale of moveable property, CIII 40
For illegal act under color of distraint, CXIV 42
For vexatious distraint, awardable in suit, CXXXVIII 46
For distraint of property not belonging to debtor, CXXXIX .. .. .. —
For distraint for rent not due, or due from another person *after realization*, CXLI .. 47
For illegal distraint or for injury to distrained property, CXLII .. .. .. —
For distraint by unauthorized person, CXLIII .. .. —
For resistance to distraint by third party, CXLV .. .. —
For unreasonable neglect to pay rent, II 54
Should only be awarded in special cases, 545 .. .. —
And cannot be awarded in addition to interest, 546 .. .. —
Board's Rule, 6 69
For unreasonable suit for rent, III 54

Page.

DAR-PATNIDAR *staying sale of patni by deposit, must give notice to ryots*, 208 14
DEATH OF PARTY (*See* ABATEMENT *and* "CERTIFICATE.")
DECISION— *What documents to contain*, 536 50
DECREE—(*See also* JUDGMENT *and* EXECUTION.)—When it may first be given, LXIII .. 32
For ejectment, conditional, LXXVIII 36
For enhancement under the old laws, cannot now be executed, 65 6
For possession, is no evidence of possession till executed, 209 14
Time for obtaining copy, CLVI 49
Effect to be given to it without waiting appeal, 560 58
Not to specify mode of execution, 561 .. .. —
May be modified by consent coram judice, 562 .. .. —
Or compromised with one of several creditors, 563 .. .. —
Is a separate document from the judgment, 1 62
How to be prepared, 2 .. .. —
Stamp upon copy of, 7 61
DEFAULT. (*See* "GOVERNMENT ESTATE" and "RES-JUDICATA.")
Judgment by, at hearing LV.. 30
If plaintiff, when sent for, does not come, LXIV 32
Dismissal of appeal for, CLVII 50
DEFAULTER.—(*See* DISTRAINT)—How to obtain withdrawal of distraint, CXXI 43
DEFENDANT.—May be required to produce document, XXXIX 28
Need not, but may, be *personally* summoned, XLIII .. .. —
May bring his own witness without process, XLIV, LXI .. .. 29 to 32
How to be summoned, XLV 29
And arrested upon warrant, XLIX .. .. —
Procedure towards, after arrest, L, LI 30
Second warrant against, or proclamation, LII .. .. —
JUDGMENT AGAINST, by admission, LV .. .. —
Ditto ex-parte, or adjournment for attendance, LVI .. .. —
Condition before case so adjourned is heard, LVII 31
Re-hearing of a case decided ex-parte, LVIII .. .. —
Examination, cross-examination, and written defence, LIX .. .. .. —
Production of documents, LXII 32
May be summoned in person, if the personal knowledge of his representative is insufficient, LXIV .. .. —
And suffer judgment ex-parte if he does not attend, *ib.* .. .. .. —
Generally, may be summoned personally, LXXI 34
Not originally sued, should not be summoned late in the proceedings, 441 28
May summon witnesses by process, LXVI 32
Issues may be tried in his absence, LXVIII 33
Attendance of certain females not to be required, LXX .. .. .. —
Arrest of, upon decree, without process, LXXXIV 37
Damages against, for causeless withholding of rent, II 54
By tender of rent before suit, can escape costs, VII 55
Do. during suit, do. subsequent costs, VIII 56
(*See* JUDGMENT-DEBTOR.)
DEPENDENT TALUKDAR. (*See* INTERMEDIATE TENURE-HOLDER *and* SALEABLE TENURE.) .. —
DEPOSIT of rent with Collector, IV 55
Procedure of Collector thereupon, V .. .. —
Suit for balance to be brought within 6 months of notice, VI .. .. .. —
DEPUTY COLLECTOR.—
Control of superior Revenue Authorities over, CLI 48
Appeals from his orders to the Collector, *ib.* .. .. —
And from certain judgments, CLV 49
From the rest to the Judge or High Court, CLX 50
Uncovenanted exercising Police functions cannot exercise powers under this Act, CLXIV 51
Powers of, XIX 58
Jurisdiction of, XX 59
May issue notice of enhancement, 75 6
Can admit revival of suit, 444 31
Can try appeals in referred cases, 564 59
Covenanted delegated powers when left in charge, XI, 1 68
Collector to report annually upon Deputy's proceedings, VII, 2 66
DIET MONEY—of prisoners to be deposited with every application for arrest, XCV .. 39
And to be paid, month by month, in advance so long as the imprisonment continues, XCVI .. .. —
To be added to costs, XCVII.. .. .. —
DILUVION *entitles lessee to abatement, unless barred by special condition of lease*, 178 .. 13
Origin of cause of action in such a case, 182 .. .. —
Abatement on account of diluvion may be allowed in a suit for rent, 176 12

Page.

DILUVION —*(Continued.)*
Onus is upon tenant claiming abatement, 113 8
DISMISSAL FOR DEFAULT *is not a decision quoad the limitation of Section* 77, 492 36
DISPOSSESSION—of grantees of proprietary rights, XXVIII 24
Suit does not lie for rent of land not in possession of tenant if landlord knows it, 195 .. 14
Of landlord, may be effected by disturbing tenants, 321 .. . 20
By other than landlord gives no claim to abatement, 179 13
(*See* "REINSTATEMENT" *and* "EJECTMENT.")
DISTRAINT.
A landlord who has caused loss of crops by illegal distraint, cannot recover rent in a suit, 268 17
General right of, in whom vested, CXII 42
Cannot be exercised if cultivator has given security, *ib.* . .. .. —
Can only be exercised for an arrear due from occupant cultivator, 513 . . —
Suit lies by actual cultivator if distress is levied from intermediate tenant, 328 . 20
Limitation of right, CXIII 42
Law as to Agents, CXIV .. .. —
Written demand on defaulter, CXVI .. .. —
Mode of, and amount to be distrained, CXVII 43
Of crops which can, and cannot be stored, CXVIII .. .. —
Collector may aid, CXIX .. .. —
Rules concerning this, VI 65
Servant employed in, to be duly authorized, CXX 43
When to be withdrawn before sale, CXXI . .. .. . —
Application for sale, CXXII . .. . —
Officer to be employed in sale, *ib.* .. .. —
Form of application, CXXIII .. .. —
Costs of notice to be deposited, *ib.* .. .. —
Procedure of Amin upon application, and of Collector, CXXIV 44
Sale to be stayed on institution of suit, CXXV .. .. —
SUIT concerning, XXIII 7 20
Suit may be instituted before application for, CXXIV 44
If not dispute rent the onus probandi *is upon him*, 327 21
Release of property upon security, CXXVII 44
SALE when to be held, CXXVIII .. .. —
Where and how, CXXIX . .. . —
Postponement of Sale, CXXX 45
Payment of purchase money, CXXXI .. .. —
Application of proceeds—Government costs, CXXXII .. .. .. —
Officers employed in sale may not purchase CXXXIII . .. .. —
Irregularities of distrainor to be reported to Collector, CXXXIV . .. —
Issue of second notice, *ib.* .. . . —
Recovery of Government costs if no sale take place, CXXXV . .. —
Revision and periodical report of Officer's proceedings, CXXXVI .. 46
Second proclamation after decree, CXXXVII .. . . —
Procedure in suits, CXXXVIII . .. . .. —
Damages for vexatious distraint, *ib.* .. .. .. —
Suit by claimant of property distrained CXXXIX .. .. .. —
Claim, by intervenor, of right of distraint, CXL 47
Suit for damages, after distraint, for wrongful distraint, CXLI .. .. —
Do. illegal distraint or loss of distrained property, CXLII . .. .. —
Suit for damages for illegal distraint lies, before Collector, only against landlord, 514 . —
Do unauthorized distraint, CXLIII .. . . —
Suit lies against Gomashta personally or against his master if he ratify, 329 . .. 21
Limitation of these suits for damages, CXLIV 47
—RESISTANCE OF, CXLV .. .. —
Procedure upon arrest of defendant, XVIII 58
DOCUMENT (*See* EVIDENCE) OF PLAINTIFF when to be delivered, XXXVIII 28
The rejection of documents as forged does not relieve the Court from the necessity of examining the rest of the evidence, 347 21
If Lower Court pronounce a document forged, Appellate Court cannot avoid giving a decision upon this point, 348 .. . . —
Suit need not be dismissed for non-delivery, 437 28
After rejection of document, a fresh case cannot be set up, 438 .. .. .. —
First Court has full power as to receiving after time, 439 . .. .. —
If only collateral, should be received at any time, 440 . .. .. —
May be required from defendants, { XXXIX / XLIV .. . .. . —
Or DEFENDANT, production to be ordered in Summons or Warrant { XLIV / XLIX .. 29

Page.

DOCUMENT.—*(Continued)*
When to be delivered, LXII 32
Witness may be summoned to produce, LXVI .. .. .. —
EJECTMENT (*See* "DISPOSSESSION" AND "REINSTATEMENT.")
Liability of RYOT to, XXI 10
Does not destroy a right to hold at fixed rates, 10 2
Effect of not ejecting a tenant-at-will at the close of the year, 58 4
Ryot cannot be ejected for 10 months' arrear, 131 10
Landlord's admission of transferable character bars ejectment, 133 .. .. —
If lease gives right of re-entry, legal proceedings are still necessary, 135 .. .. —
But this may be provided against, ib. .. .. —
Is not legal merely because tenant's title is bad, 306 19
Is not illegal, because effected without Collector's assistance, 307, 370 19-22
May be illegal, though effected through Magistrate, 324 20
Of a FARMER or leaseholder, XXII 10
If he hold over, 376 23
If the tenure is saleable, ejectment is not applicable, 493 36
Unless there is a special condition in the lease, 494 .. .. —
SUIT for, XXIII, 5 18
A suit to cancel a zar-i-peshgi lease does not lie to Collector, 284 .. .. .. —
Appeal lies to Judge, 285, 496 18-36
Ryot cannot question his landlord's title in a suit to eject, 287 18
For arrears, is barred by receipt of rent for a subsequent year, 289 .. .. .. —
Cannot be resorted to for breach of condition of lease, unless stipulated, 290 .. .. —
Courts will grant equitable relief, 292 .. .. —
For ejectment of TRESPASSER, *suit lies to the Civil Court*, 294 .. .. .. —
If the defendant deny that he is a tenant, the suit lies to the Civil Court, 295 .. .. —
A suit to eject may be brought in the Civil Court, notwithstanding a previous claim for rent in the Revenue Courts, 296 .. .. —
Tenant cannot be ejected from house under Act X of 1859, 497 36
Intervenor cannot be heard, 500 .. .. —
Unless the decree be for ejectment only, ryot escapes by paying arrears, 501 .. .. —
Decree for, must be conditional LXXVIII .. .. .. —
Decree how to be executed against ryot, LXXXII 37
Do against farmer, &c., LXXXIII .. .. —
SUIT AGAINST EJECTOR, XXIII, 6 19
Heir cannot sue if landlord denies his title, 313 .. .. —
The action lies only when ejector is the landlord, 314 .. .. .. —
Civil Court has no jurisdiction if ejector is landlord, 315 .. .. .. —
Otherwise the suit lies to the Civil Court, 316 .. .. —
The mere allegation of ejector that he has a landlord's title, does not bar the jurisdiction of Civil Court, 317 .. .. —
A Government farmer may eject before he gets his pottah, 320 20
Disturbing or dispossessing cultivators is an ejectment of their landlord, 321 .. .. —
Ryot ousted by Magistrate's order need not refer to it, 323 .. .. .. —
Application to Collector for ASSISTANCE in, XXV 22
Does not lie if there is a dispute as to tenant's title, 368 .. .. .. —
Collector cannot consider deed of compromise, 369 .. .. —
Landlord need not apply to Collector in all cases, 370, 371 .. .. .. —
Mode of contesting Collector's order, 372 .. .. —
Appeal from Collector's order, 373 23
Landlord installed by Collector is to be considered in legal possession, 375 .. .. —
Landlord purchasing rights and interests cannot eject previous purchaser, 377 .. .. —
Of RENT-FREE TENANTS, XXVIII 24
ENCROACHMENT *of tenant how to be assessed*, 162 12
Does not affect tenure on which original land is held, 201 14
ENGLISH language, Judgment may be written in, XV 58
ENHANCEMENT OF RENT,—by notice. (*See also* NOTICE) XIII 5
Cannot be effected now under an unexecuted decree under the old laws, 36 3
Decree for enhancement need not specify the rent of each field, ib. .. .. .. —
Landlord is bound to prove his case, 37 .. .. —
Of rent fixed at Government settlement, 38 .. .. —
Liability of middleman, 80 6
Do. of homestead lands, 82 .. .. —
Farmer for a term may enhance, 84 .. .. —
Procedure where right to hold at fixed rates is claimed, 86 .. .. —
Ryot with no R O how to contest, 88 .. .. —
Of under-tenure of permanent kind, 92 7
Decree of a competent Court is evidence, but not conclusive, 102 8

	Page.
ENHANCEMENT OF RENT.—*(Continued.)*	
Of Jangalburi tenure, 108	8
Can only be claimed after notice under Section 13, *Act X*, 120	9
Of rent of lands upon which buildings have been erected, 239	16
Modes of contesting enhancement, XIV	6
OF RYOTS WITH R. O., XVII	7
I. On ground of rent being too low as compared with neighbours, *ib.* 1	—
Rent of whole neighbourhood cannot be raised, 97	—
This is the old Regulation Law, 98	—
Purchaser of Government Estate cannot enhance on this ground, 99	—
Comparison need not be with the same village, 100	8
A previous ex-parte enquiry is no evidence, 101	9
II. On ground of increase of value of produce, XVII, 2	—
LEADING CASE.—104	—
Tank and garden held not exempt, 106, 107	—
Reclaimed forest not exempt, 108	—
But improvement from Ryot's own capital exempt, 109	—
Onus upon Ryot pleading this, 110	—
Trees are a ground of enhancement, 111	—
Unculturable land made culturable, 112	—
III. On ground of area of land, XVII, 3	—
Does not apply to a Talukdar, 114	—
Nor if the pottah fixes the boundaries, 115	—
Applies to a permanent tenure, if no boundaries are specified, 116	—
Even though the pottah confer a right of abatement for deficient area, 117	—
Excess area in old Mukarari lease not liable, 118	—
If excess area is disclosed in an enquiry as to value, decree must be according to disclosure, 119	—
Limitation to Suits for enhanced rent, XXXII	26
Enhanced rent cannot be recovered by distraint, CXIII	42
ESTATE—how to be sold in execution, CX	41
UNDER COLLECTOR'S IMMEDIATE MANAGEMENT. Mode of recovery of arrears in, XXIX	25
Special remedy of debtor, *ib.*	—
ESTOPPEL. (*See* "RES JUDICATA.")	
EVICTION. (*See* "EJECTMENT.")	
EVIDENCE. (*See* "DOCUMENT" and "WITNESS.")	
Upon a remand to take particular evidence, that only can be taken, 460	33
Of local enquiry conducted by Collector in person, LXXIII	34
EXACTION of excess rent. Damages for, X	5
The damage is matter for enquiry, 62	—
SUIT for, XXIII. 3	12
Recovery of excess rent by legal process is not an exaction, 171	—
Collection of rent by landlord direct, in excess of the amount due from his farmer, is an exaction, 172	—
EXAMINATION—of Parties or their Agents on oath, LX	31
Substance to be recorded by Court in its own vernacular, *ib.*	—
Of witnesses, brought by parties, LXI	32
Of do. summoned, LXVII	33
(*See also* WITNESSES)	—
EXECUTION—OF PROCESS (*See* "PROCESS.")	
Of DECREE for	
Delivery of Pottah, LXXX	37
Do. of Kabulyat, LXXXI	—
Ejectment or reinstatement of ryot, LXXXII	—
Ejectment or reinstatement of farmer, &c., LXXXIII	—
ARREARS OF RENT, or for accounts, by arrest without process, LXXXIV	—
By arrest of surety, do. do, LXXXV	—
Against moveable property, LXXXVII	37
Issue of warrant of, LXXXVIII	—
Against heirs, XCI	38
For sums not exceeding 100 Rs., decree may be declared satisfied by one imprisonment, XCIV	38
Sale of moveable property, XCVIII	39
Sale of under-tenure for its own arrears, CV	40
Do. where decree is in favour of one Shareholder, CVIII	41
If the decree cannot be satisfied from moveable property, CIX	—
Sale of other immoveable property, CX	—
In distraint suits, CXXXVIII	46
Process how to issue, XVII	58

Page.

EXECUTION.—*(Continued.)*
Rule as to, 9 62
Civil Courts cannot execute a decree of Revenue Court, 504 38
No appeal from orders passed in execution of decree, CLI 48
Not even to the Civil Court, 516 .. .. —
Collector cannot review his own order, 517 49
Nor can the High Court interfere except under Section 35, Act XXIII of 1861, 518 .. —
Unless the order has a judicial character, 519 .. .. —
Or unless the order is passed quite without jurisdiction, 523 .. .. .. —
Or affects rights of a third party, 525 .. .. —
Court will not always exercise power under Section 35, 522 .. .. .. —
Execution must not be deferred pending appeal, 560 58
(See also "WARRANT" AND "LIMITATION.")
EQUITABLE RELIEF *when penalty of forfeiture has been incurred*, 292 18
EXCESS AREA.—*Onus upon landlord claiming enhancement on ground of*, 113 8
EXCESSIVE DEMAND *of* RENT.—*In a suit for, Court may fix the rent*, 87 6
EXHIBIT.—(*See* "DOCUMENT" and "EVIDENCE").
EX-PARTE JUDGMENT, LVI 30
In appeal, CLVII 61
Application for a revival of suit, LVIII 31
Lies within 15 days of the time when defendant proves that the judgment came to his notice, 446 31
EXTORTION.—Of legal rent by illegal means, XI 5
Damages and penalty for, XII .. .. —
Suit for, XXIII, 2 12
FAIR and EQUITABLE.—(*See* "ENHANCEMENT," "NEIGHBOURING LANDS," and "PRODUCTIVE POWERS.") .. .. —
Presumption in favour of old rates, V 3
Fair and equitable rates must not include ryot's improvements, 109 8
A ryot claiming fixed rent cannot fall back upon, 35 3
Court need not go into details, 36 .. .. —
Onus upon landlord questioning them, 37 .. .. —
Collector's Jamabandi may be assumed to have been fair and equitable at the time it was made, 38 .. .. —
LEADING CASE, 104 8
A local enquiry is not a sine quâ non, 105 .. .. —
FARM.—May be cancelled for arrears by decree of Court, XXII 10
Suit to cancel, XXIII, 5 18
Landlord who has farmed his estate cannot issue notices of enhancement, 85 6
FARMER.—*Cannot acquire right of occupancy*, 45 4
Is not liable to notice of enhancement under Section 13, Act X of 1859, 83 6
May enhance rents, 84 6
May register transfers, 383 23
And sanction sub-division of tenures in good faith, 383 .. .. —
May measure lands, 548 56
Suit for illegal ejectment by, XXIII, 6 19
Application for aid to eject, XXV 22
Does not lie if he is a mortgagee, *ib.* .. .. —
Of estates under Collector's immediate management, recovery of arrears from, XXIX .. 25
Special remedy against this special process, *ib.* .. .. —
How to be ejected or reinstated, LXXXIII 37
FEMALE of rank.—Attendance of, not to be enforced, LXX 33
FERRY.—*Suit does not lie for rent of*, 243 16
FINALITY.—Of orders and judgments. (*See* APPEAL)
FISHERY.—*Lease of, conveys no interest in the soil*, 293 18
FIXED RENT.—(*See* RYOT AT F. R.)
FORFEITURE.—*Before enforcing condition of forfeiture, Courts will grant all equitable relief*, 292 18
FORGED DOCUMENTS.—(*See* "DOCUMENTS").
FORM—of summons, A 51
Declaration by ryot depositing rent, A 59
Notice of deposit of ditto, B 59
Warrant, B 52
Notice to accompany Warrant, C .. .. —
Security Bond, D .. .. —
Warrant of execution against person, E .. .. —
Do. do. effects, F 53
Application for sale of distrained property, CXXIII 43
Notice of ditto, G 53

Page.

FORM.—*(Continued.)*
Proclamation of defendant, II 70
Summons to witness, I .. .. —
Returns of distraining officers, 13 64
GOLAH.—*Suit for rent of*, &c., 241, 245 16
GOMASHTA.—(*See* "AGENT FOR MANAGEMENT OF LAND").
GOVERNMENT ESTATE.—*Rights of purchaser to enhance rent of ryots*, 39, 99 3-7
Chokidari lands erroneously included in settlement, 226 15
Purchaser of, must admit tenures respected by Government .. .. .. —
GRAIN RENTS.—*Are transitory*, 17 2
HAWALA *tenures are transferable*, 138 10
Hawaladar who cultivates himself is a ryot, 81 6
HEIR.—(*See* "MINOR") *of surety, his liability*. 365 22
Continuing in possession must prove relinquishment, or be responsible for rent, 232 .. 15
Interfering with property, liable to rent, 233 .. .. —
Of ryot cannot sue for reinstatement before Collector, if landlord dispute his title, 313 .. 19
Fresh limitation does not run from succession of, 406 25
Execution against, after notice, XCI 38
HIGH COURT.—Appeal to, CLX 50
HOLDING OVER.—(*See* "ABATEMENT"). *Acceptance of rent from old tenant bars claim upon the new*, 198 14
If landlord does not eject tenant-at-will at close of the year, he acquiesces in another year's holding, 289 18
HOMESTEAD.—*Lands liable to enhancement*, 82.. 6
HOUSE.—(*See* "IMMOVABLE PROPERTY").
HOUSE-RENT.—*Not recoverable under Act X*, 234-235 15
Jurisdiction of the Civil Courts, 236 16
The erection of buildings after lease does not alter jurisdiction or bar enhancement, 238 .. —
IMMOVEABLE PROPERTY.—Execution against, CX 41
IMPRISONMENT.—Before hearing, LI 30
After judgment, without process, LXXXIV 37
Upon warrant of execution, XCIII 38
Limitation of, *ib.* ... ... —
Only one I for one decree, XCIV ... ... —
One imprisonment may be held to satisfy a decree not exceeding 100 Rs., *ib.* ... —
Diet money to be advanced by judgment creditor, XCV 39
For resistance of distraint, { CXLV 47
{ XVIII 58
INSOLVENT not to be imprisoned in execution, XCIII 38
INSTITUTION of suit, XXXIV 27
Where to take place, XX 59
INTEREST.—Upon arrears of rent, XX 9
Not to be allowed on arrear payment of share of revenue, 126 ... ... —
Need not be allowed at all, 127 ... ... —
May be allowed as Court pleases, 128 ... ... —
Cannot be allowed in addition to damages, under Section II, Act VI. of 1832, *B. C.*, 129 —
May be allowed from date of Act X. on a suit founded upon a Kabulyat executed before Act X., 130 ... ... —
Upon instalments.—Does the receipt of instalment without interest act as waiver? 246-247 16
Not to run on sums paid into Court by defendant, LXXV 34
INTERMEDIATE TENURE,—*Holder of an, is not a Ryot*, 40 3
Is liable to cancelment for arrears, by decree of Court, XXII 10
Suit to cancel, XXIII, 5 18
Application to eject from, XXV 22
(*See also* "FARMER").
PERMANENT AND TRANSFERABLE.
If the rent has not been changed since the permanent settlement, it cannot be increased, XV 7
Specimen of such a tenure, 89 ... ... —
The rent cannot be enhanced on ground of area, 90-114 ... ... 7, 8
The Sale Law does not override this, 91 7
Cannot be enhanced on an unexecuted decree under the old laws, 93 ... ... —
Change of fractional part vitiates the presumption, 94 ... ... —
Proved admission of landlord sufficient for Revenue Courts, 133 10
Presumption in favor of the tenure from 20 years' unchanged rent, XVI 7
Zemindar's position does not affect the presumption, 96 ... ... —
Transfer must be registered in landlord's office, XXVII 23

Page.

INTERMEDIATE TENURE.—*(Continued.)*
Otherwise it will not be recognized in case of sale of tenure, CVI 40
Landlord must admit registry, XXVII... 23
If he refuses, an application lies to the Collector, *ib.* 23
Sale of.—(*See* "SALE").
INTERPRETATION of words, CLXVIII 51
INTERVENOR.
Claiming to be the real tenant, can he be heard in a suit for arrears? 265-267 ... 19
Claiming tenure by transfer from ryot about to be ejected, must prove, 288 ... 18
Cannot be heard in a suit to recover possession, 301 19
Nor in a suit for accounts, 367 22
Nor in a suit for ejectment, 500 36
In a rent-suit claiming right to receive rent, LXXVII 35
Judge should remand a case in which such an I appears for the first time before him, 468 —
A clear order of the Civil Court is sufficient authority for Collector, 470 ... —
A partition award is no sufficient proof against an I, 471 ... ... —
A proprietor who has sold his estate and inducted his vendee, cannot sue a ryot for rent, 473 ... ... —
Proof that his RIGHT *has ceased puts an I out of Court.* 474 ... ... —
Instalment by Collector under Section 25 *gives possession,* 475 ... ... —
A judgment-debtor not ousted is entitled to collect rent, 476 ... ... —
If plaintiff prove no case, is it necessary to hear I before dismissing? 477-479 ... —
Case in which I appears is not, necessarily, appealable to the Judge, 480 ... —
But if Collector erroneously tries title, Judge should hear appeal, 481 ... ... —
Can only appear if he claim rent from the same ryot for the same land, 482 ... —
Collector cannot deal with a question of right and title, 481-483 ... ... 35, 36
The one point is who has been in receipt of the rent, 485 ... ... —
If I claim only part of the rent, the remainder must be disposed of, 486 ... ... —
Receipt of rent as Agent confers no title to continue to receive it, 487 ... ... —
And if it is alleged that the plaintiff was only an Agent, enquiry must be made, 488... —
Onus is upon I, 489 ... ... —
Case cannot be decreed against I, even though he admits himself to be liable for rent, 490 ... ... —
Limitation of Section 77 *bars only proceedings in regard to rents in suit, not proceedings for establishing title,* 491 ... ... —
Dismissal for default is not a decision under Section 77, 492 ... ... —
Can appear in suit for a Kabulyat, 168 12
Claiming moveable property taken in execution, C... 39
Adjudication of his claim, CI ... ... —
If he fails to establish his right, liable to have to pay compensation, CII ... ... —
Claiming under-tenure about to be sold for arrears, CVI 40
Do. immoveable property, do. in execution, CXI 41
Claiming distrained property, CXXXIX 46
Claiming right of distraint, CXL 47
IRREGULARITY.—In conduct of sale of moveable property, CIV 40
ISSUE of process, XVII 58
ISSUES when and how to be fixed, LXV 32
Must be adhered to, 345, &c. 21
Must be properly fixed, 450-451 32
JANGALBURI.—*Tenant liable to enhancement,* 108 8
JOINDER.—*Of several causes of action invalidates the whole proceedings,* 339 ... 21
JUDGE.—Appeal to, CLX 50
JUDGMENT.—*Must be based upon recorded evidence, not on Judge's opinion or private knowledge,* 334 21
An order "to file proceedings" is a judgment, though bad for informality, 559 ... 58
How to be written and pronounced, XV 58
By default, or upon admission. LV 30
Ex-parte, LVI 58
In appeal, CLIX 50
JUDGMENT-CREDITOR.—If possible to give list of moveable property for seizure, LXXXVII 37
Must, in person or by Agent, point it out, *ib.* .. .. —
May apply for second and successive Warrants of Execution, LXXXIX 38
Must provide diet money on applying for arrest, XCV 39
May be awarded compensation for vexatious claim to moveable property, CII ... —
Liable to suit in the Civil Court for damages if he proceed with sale after claim, CIII 40
May apply for sale of under-tenure for its own arrears, CV ... ... —
But not while Warrant of Execution against person or moveable property is out, *ib.* ... —

Page.

JUDGMENT-CREDITOR.—*(Continued.)*
If sale does not satisfy a decree, may proceed against other property, *ib.* 40
Can only apply for sale of *other* immoveable property after issue of process against the person and against moveable property, CXI 41
(*See* "LIMITATION.")
JUDGMENT-DEBTOR. (*See* "EXECUTION OF DECREE.")
Of Civil Court may continue to collect rent till ousted, 209 14
JURISDICTION *of Collector in rent suit; its nature depends, generally, upon existence of relation of landlord and tenant (See* "LANDLORD AND TENANT.")
Of Courts, XX 59
LEADING CASE, 330 90
Acts done without jurisdiction are, ipso facto, null and void, 333 ... ... —
Judge cannot set aside order of Collector passed without jurisdiction, unless there is right of appeal, 444 31
But an action lies to the Civil Court to set aside an order passed wholly without jurisdiction, even in execution of decree, 523 49
High Court will hear an appeal from Collector on point of jurisdiction, 518 ... —
Finding of Court of concurrent jurisdiction cannot be questioned, 343 21
KABULYAT must be given if pottah is tendered, IX 4
SUIT FOR, XXIII, I 10
Tender of pottah must precede suit for kabulyat, 145 11
And, in the case of a tenant-at-will, agreement as to terms, 63-150 ... ... 4, 11
But the plea of non-tender must be raised at first, 162 12
If the plea of "fixed rates" is raised, the issue must be tried under Sections 3 and 4, Act X of 1859, 159 11
In the case of resumed RENT-FREE *land*, 144 ... ... —
If the plea is "rent-free," the issue is whether the relation of landlord and tenant exists, 217 15
Does not lie till such land has been resumed, 224 ... ... —
Plaintiff must define the lands, 230 27
Institution of suit is proof of tender of pottah, 146 11
Lies without previous notice (FULL BENCH), 147 ... ... —
But such a suit, if for enhanced rates, must disclose legal ground of enhancement, 148 ... ... —
Grounds of enhancement need not be stated when ryot has no right of occupancy, 149 ... ... —
Plaint need not call attention to fact of enhanced demand, 151 ... ... —
Transferee or purchaser of parent tenure cannot sue for a fresh Kabulyat, 153 ... —
Relation of landlord and tenant must be proved, 154 ... ... —
If relation of landlord and tenant cannot be established, the suit must be for ejectment, 155 ... ... —
Shareholder having given K for some lands, must show cause why he should not give one for the rest, 156 ... ... —
In a suit for a K and to fix rent, proof of pottah is not necessary, 157 ... ... —
Lies against a squatter, ib. ... ... —
Primâ facie proof of rent-free holding defeats, 158 ... ... —
Need not be given for an istimrari tenure, 162 12
Intervenor must be made a party, 168... ... ... —
Collector cannot order insertion in kabulyat of illegal condition, 169 ... ... —
Suit may be instituted at any time during tenancy, XXXI 26
DECREE for, how to be executed, LXXXII 37
KANUNGO *papers, weight to be attached to*, 557 57
KHAMAR lands—no right of occupancy can accrue upon, VI 3
Right of fixed rent may exist in, 33 ... ... —
LAND AGENT (*See* "AGENT.")
LANDHOLDER must give a pottah to every ryot, II 1
Relation of landlord and tenant must be established, I ... ... —
Cannot enhance rent of F. R. ryots. III ... ... —
Nor of dependent F. R. tenants, XV 7
Can only make ryot with R. O. pay fair and equitable rates, V 3
And can only enhance his rent on certain grounds, XVII 7
No right of occupancy accrues upon his private lands, VI 3
May provide by contract against the obtaining by ryot of right of occupancy, VII ... 4
May make what arrangements he pleases with other ryots, VIII ... ... —
Is entitled to a counterpart, IX ... ... —
Liable to pay damages for exacting excess rent or withholding receipts, X 5
May not compel the attendance of his tenants, XI ... ... —

Page.

LANDHOLDER.—*(Continued.)*
And for extortion of even legal rent by illegal means, XII 5
Procedure for enhancing rent, XIII .. .. —
(*See* EJECTMENT, REGISTRY, LIMITATION, DISTRAINT, and MEASUREMENT.)

LANDLORD *and* TENANT.—*Relation must be established before the following suits lie* :—
For pottah, 142 10
For arrears of rent, 215 15
For kabulyat, 224... 15
For ejectment, 294, 297 18
For reinstatement, 314, 317 19
In all suits, 352 21
For damages on account of illegal distraint, 514 47
Action lies after the relation has ceased, 353 21
What constitutes the relation without written contract, 157 11
If the relation does not exist, proceedings must lie in the Civil Court, 295 18
Lessee cannot plead that lessor is not his landlord, 218 15
Landlord cannot defeat Collector's jurisdiction by simply pleading that ryot is not his tenant, 354 21
Limitation cannot bar claim of landlord against tenant (*See* "ADVERSE POSSESSION"), 44, 416 .. .. 4, 26
Landlord may be summoned by tenant as a witness, 455 33
Instance of a shareholder transferring himself into a tenant, 156 11
Shareholder's arrangements among themselves do not create this relationship, 251-3 .. 16
Act X is a code of the law in regard to the relation of landlord and tenant, 351 .. 21

LEASE *(See* FARM AND FARMER.)
Without power to hold on pending fresh arrangements, does not bar the right of a farmer to a new kabulyat, 170 12
An amildastak given in anticipation of a lease, conveys no title, 325 20
WITHOUT TERM *is not a permanent lease, though it conveys some rights*, 47 4
FOR A TERM *does not necessarily bar right of occupancy*, 51 .. .. .. —
The question will be whether it was intended to limit occupation to the term, or only to fix the rent for the term, 52 .. .. —
Such a lease must be considered void as regards term, 59 .. .. .. —
To ryot does not prevent landlord farming his property, 170 12

LIMITATION.
To suits for assessment of rent-free lands, 12 years from date of title, XXVIII .. 24
Whether the rent-free title dated from before or after the Permanent Settlement, 398 .. 25
To suits in general under this Act, one year, XXX 25
In a suit for abatement dates from demand of excess rent, 182 13
Does not commence afresh on succession of heir, 406 25
Act X is a complete code itself as to L, 407 .. .. —
Prescribed by Act X of 1859 *is not superseded by the general Law of Limitation* (FULL BENCH), 408 .. .. —
Time occupied in prosecuting suit in good faith in wrong Court cannot be deducted in cases under the Rent Laws, 409-410 .. .. —
Onus to prove the facts is upon defendant pleading limitation, 411.. 26
But plaintiff must prove date of cause of action, 412 .. .. —
Cannot be pleaded for the first time in appeal, 413-414 .. .. .. —
But the Appellate Court should consider such a bar propria motu, 415 .. .. —
The law on the subject expounded, ib. .. .. —
No limitation can bar claim of landlord against tenant, except as specially provided in Act X of 1859, 416 .. .. —
Day of decision to be excluded in reckoning limitation for appeal, 418 .. .. —
To suits for Pottahs and Kabulyats—during tenancy, XXXI 26
To suits for ARREARS OF RENT, three years from close of the year, XXXII.. 26
Only three years' rent can be recovered. Court must notice this issue, 419 .. .. —
No deduction whatever can be allowed in computing the three years, 420 .. .. —
Non-payment of rent for a lengthened period does not bar suit, 422 26
From date of proceedings to fix rent; one year, 423 .. .. —
Provided that the form of that action did not admit of a decree for the rent, 424 .. 8
In a case under Section 77, bars only suit for the rents in suit, 471.. 36
For balance of an arrear, if a portion is deposited, six months, VI 55
For arrear of enhanced rent after notice, three months, *ib.* .. .. .. —
Against a Collecting Agent, one year from close of agency, XXXIII 26
Suspension closes agency, 425 27
Special provision in case of fraud, XXXIII 26
The fraud must be by the Agent himself, 426 27
Right of action revives if Agent renders an account; but in Civil Court, 428 .. .. —

	Page.
LIMITATION.—*(Continued.)*	
This Section does not apply to sureties, 429	27
From what period does it run, 446	31
To application for re-hearing of case decided ex-parte or by default, 15 days, LVIII ..	—
Do. of case in which Collector's judgment is final, 30 days, CLIV .. .	49
To application for re-admission of appeal, 15 days, CLVIII	50
Do. for revision of Collector's orders in measurement case, 15 days, X	56
Of Warrant of execution, 60 days from date of Warrant, LXXXVIII	38
Of execution of decree, without notice, one year, XC	—
With notice, if for sum not exceeding 500 Rs., three years, XCII	—
Do. exceeding 500 Rs, three years from date of last process, *ib*...	—
Of imprisonment in execution, XCIII	—
To suit in Civil Court to establish right to moveable property, taken in execution, one year, CIII	40
To do. do. for damages for irregularity in sale of moveable property, one year, CIV ..	—
To right of distraint, arrear of one year, CXIII	42
To suit to contest demand of distrainor, 15 days, CXXIV	44
Of costs to be recovered on behalf of Government if sale of distrained property do not take place, 10 Rs., CXXXV	45
To application for sale of distrained property, from Collector's order, 5 days, CXXXVII	46
To suit for damages connected with distraint, 3 months, CXLIV	47
From date of cessation of illegal act, 515	—
To complaint of resistance of distraint, 15 days, CXLV	—
To *appeals* from *orders* of a Deputy Collector to a Collector, 15 days, CLII	49
Do. *judgments*; do do, CLVI	—
It is doubtful whether High Court can give Collector discretion to extend it, 529 ..	50
Do. orders of a Collector to Commissioner, 30 days, CLII	49
To value of suit in which Collector's judgment is final, 100 Rs, CLIII	—
To value of suit in which appeal lies to Judge, 5,000 Rs, CLX	50
To appeal to Judge or High Court, CLXI..	—
But Judge should exercise discretion, 541	51
To right of shareholder in an undivided estate to sell under-tenure, CVIII	41
Do do. to distrain, CXII	42
LOCAL ENQUIRY.—(*See* "COMMISSIONER.") Law in regard to, LXXIII	34
Results of, must be adopted, though not contemplated when the enquiry was ordered, 119 ..	9
If conducted by Collector in person, his recorded observations are evidence, *ib*. ..	68
Rules as to, IV	63
If a party does not examine a Commissioner in open Court, he cannot subsequently make objections, 466	34
How to test the value of Commissioner's Report, 467	—
LUMPING SUITS *is forbidden*, 339	21
MAGISTRATE is to assist execution of decree for ejectment or reinstatement on Collector's application, LXXXII	37
MANAGERS of estates under Collector—may be sued as landlords, XXIX	25
May proceed against defaulter by Regulation VII of 1799, *ib*	—
Special remedy of defaulter in that case, *ib*.	—
May distrain, CXIV	42
MARKET—*suit for rent of*, 244	16
MEASUREMENT.—Landholder has a right of, IX	56
Of lands leased as measured, not permitted, 201	14
Of lands in an under-tenure lawful, 550	56
Possession, such as will entitle to measure, may be established without proof of receipt of rent, 551	—
In the absence of ryot, invalid, unless he has received notice, 552	—
General measurement of estate may be made by a farmer, 548	—
And by a shareholder of an undivided estate, 549	—
If opposed, may apply to Collector, IX	—
Penalty to tenant not attending upon Collector's order, *ib*.	—
Collector to measure upon landlord's application, X	—
To be with standard pergunnah pole, XI	57
And to record assessment and tenures upon his special application, *ib*.	—
Rules as to this, IX	68
Procedure if he cannot ascertain these particulars, X	56
Mode of contesting Collector's orders, *ib*.	—
MESNE PROFITS *cannot be recovered in Collector's Court in a suit for possession*, 298 ..	19
MIDDLEMAN *liable to enhancement*, 80	6
MORTGAGEE *(See* ZAR-I-PESHGI) cannot be ejected by Collector, XXV	22
Nor does suit to eject lie, 281	18